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ENVIRONMENTAL ASSESSMENT BOARD

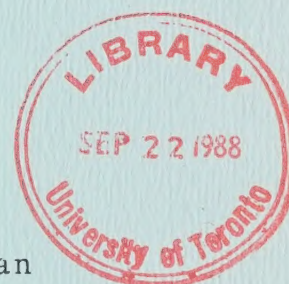
VOLUME: XLIV

DATE: September 7th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, September 7th,
1988, commencing at 9:30 a.m.

VOLUME XLIV

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
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MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
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MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

Witness

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JOHN A. J. EDWARDS

W. M. J. W. CRYSTAL, Witness

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(v)

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215	Hard copies of overhead slides presented by Mr. Crystal.	7518

1 ---Upon commencing at 9:35 a.m.

2 THE CHAIRMAN: Good morning, ladies and
3 gentlemen. Please be seated.

4 Mr. Freidin?

5 JOHN R. E. KENRICK,
6 M. MELVIN CRYSTAL, Resumed

7 CONTINUED DIRECT EXAMINATION BY MR. FREIDIN:

8 Q. Mr. Kenrick, yesterday you completed
9 the first part of your paper which described the
10 environment from a physical point of view and I
11 understand that the last part of your paper then deals
12 with how those parts of the environment that you
13 described are actually used and valued; is that
14 correct?

15 MR. KENRICK: A. That's correct.

16 Q. All right. And I understand that you
17 were going to use the term stakeholder in your
18 description of use of the resource.

19 Perhaps you could indicate to the Board
20 how you are going to use that term and how you are
21 going to approach the description of each type of
22 stakeholder?

23 A. Simply, stakeholders are those
24 individuals or group with an interest in natural
25 resources or resource management. For ease of

1 organizing the evidence, we have broken stakeholders up
2 into four groups: commercial stakeholders,
3 recreational stakeholders, local and traditional users
4 and the general public.

5 Q. I understand there is a breakdown of
6 those stakeholders on page 100 of the witness
7 statement?

8 A. That's correct. For each of those
9 stakeholder groups, for instance, the commercial one
10 being the forest products industry, miners, trappers,
11 farmers, commercial fishermen and tourist operators - I
12 won't go through the whole list -but for each of those,
13 what I hope to address is the distribution of use, some
14 of the values that are placed on the resource, either
15 monetary or otherwise, some of the issues, and how we
16 involve each of those groups in either the timber
17 management planning process or other Ministry programs.

18 Q. When you say some of the issues, what
19 are you referring to?

20 A. Some of the concerns or overlaps, if
21 you will, between interests of those stakeholder groups
22 and the interests of forest management groups.

23 Q. All right. I understand the first
24 group then is commercial stakeholders and the forest
25 products industry is the first commercial stakeholder

1 that you describe. And perhaps you could then provide
2 your evidence in relation to that particular
3 stakeholder using the approach that you just indicated?

4 A. For the forest products industry,
5 rather go through that information, the statement
6 that's in the witness panel is that that information
7 has been given by previous panels. I wasn't intending
8 to repeat it.

9 Q. All right, Panel 5. If you could you
10 just proceed then through the commercial stakeholders
11 that you do have information on?

12 A. Sure. The others. Mining, first of
13 all, just as background is a shot of the Kidd Creek
14 open pit mind just north of Timmins.

15 In 1986 there were about 44,000 people
16 employed in primary mining industry including milling
17 in Ontario; 32,000 of these were employed in northern
18 Ontario in the manufacturing sector, a further 62,000
19 were employed in the primary metals industry.

20 And I have concentrated on metals here
21 largely because there is a high correlation between the
22 area of the undertaking and Precambrian area and the
23 Precambrian area and the metals industry as opposed to
24 non-metallic minerals such as salt or talc or gypsum.

25 Of that 62,000 which were employed in the

1 primary metals industry 12,700 were in northern
2 Ontario. The value of minerals mined in Ontario in
3 1986 is about \$4.7-billion. Metallic minerals, and,
4 again, that's the correlation with the area of the
5 undertaking to a large extent was about 3.5-billion of
6 that.

7 This is Figure 27 on page 102 and I will
8 just note it is corrected. The original map, and I
9 noticed it last week, was based on an old map. The one
10 in the document has an abundance of dots in southern
11 Ontario and inadvertently included gravel pits.

12 The one that is shown here, you will
13 notice, has 16 dots in the south and that refers to 16
14 non-metallic mines, minerals. In the north there are
15 now 52 symbols. Those, to a very large extent, are
16 operating metallic mineral mines. Metallic, just for
17 clarification: gold, silver, nickel, copper, lead,
18 zinc.

19 MR. FREIDIN: Mr. Chairman, perhaps we
20 will provide you with a hard copy of the corrected page
21 102.

22 THE CHAIRMAN: Thank you.

23 MR. KENRICK: I might also mention in
24 northern Ontario at the current time there is about 51
25 not shown on that map, 51 additional mines that are in

1 advanced stages of development, not in production yet.

2 Some illustrations of value and the
3 distribution of those values across the area of the
4 undertaking. In 1985 copper, gold and zinc from the
5 Porcupine/Timmins area was valued at about
6 \$585-million; gold from Red Lake area was valued at
7 125-million; gold and iron from Kirkland Lake,
8 130-million; uranium from Elliott Lake, 550-million;
9 and the largest of them all nickel, copper, platinum
10 group metals from Sudbury worth 1.7-billion.

11 MR. FREIDIN: Q. And those are figures
12 which relate to the amount that was actually taken out
13 in that year?

14 MR. KENRICK: A. It is the value of the
15 products sold. Just leading into the issues, the life
16 blood of mining to a large extent is exploration and
17 mine development.

18 In 1986, there was 160,000 of mining
19 claims recorded in northern Ontario. In 1985,
20 285-million was spent on exploration and development.

21 To speak briefly to the types of issues
22 we deal with. Because mining and especially for
23 metallic minerals and logging tend to share the same
24 environment in the north, discussions are ongoing
25 between the two industries on an ongoing basis.

1 Common interests include the desire for
2 access roads, that provides access both for exploration
3 and for logging. We have set up mechanisms in the
4 recording offices, mining recorder's office to inform
5 both industries of each other's activities. There is
6 notices put on claim maps, notices of our activities
7 are sent to claim holders through a mailing list we
8 acquire through the recording office.

9 District managers are required to review
10 the mining prints that record claim locations and
11 copies of both the operating plans and the annual work
12 schedules are filed in the recording office. This is
13 to try and give both parties advance notice of where
14 they may be operating on the same real estate.

15 Especially important and the most common
16 types of conflicts that one is apt to run into is the
17 preservation of claim posts, the corner posts on a
18 mining claim and grid lines, sort of the survey plan
19 for magnetic surveys.

20 On a regular basis, including timber
21 management planning, the Ministry deals with
22 organizations generally at three levels: provincially,
23 regionally and locally. We deal with the Ontario
24 Mining Association, the Prospectors and Developers
25 Association, both locally and provincially, Canadian

1 Institute of Mining and Metallurgy. In most mining
2 communities there is a group of -- there is a mine
3 managers group that we deal with, individual companies
4 and, lastly, individual prospectors.

5 If I can just go on to trapping. A
6 background photograph taken near Lake of the Woods by a
7 native trapper. 1985-86, there were about 17,000
8 licences issued to trappers in Ontario. There is
9 different types of licences. About 7,300 of these were
10 resident trappers and they basically trap on private
11 land, many of them in the south. 3,200 were treaty
12 Indians and 3,100 were other registered trappers on
13 Crown lands.

14 The balance for the forms of licences
15 issued to private landowners, farmers and racoon
16 hunters. That system of licensing and trap line has
17 been in existence since at least 1942.

18 Q. When you are talking about a trap
19 line, is there actually a sort of designated line
20 somewhere on the map or is it something different than
21 that?

22 A. For registered trap lines it is a
23 designated area, it is covered in a regulation, it has
24 got a defined boundary, yes.

25 Q. Does the boundary though sort of

1 follow some line through the bush or is it a different
2 geographical area?

3 A. It may follow a watershed boundary,
4 it may follow a road system, sometimes it is
5 identifiable on the ground, sometimes it isn't.

6 I know from experiences in the far north,
7 for instance, that the way those boundaries were
8 determined when we are dealing with native trappers on
9 the Hudson Bay coast is: It is done by negotiation
10 and -- it is family trapping areas. So what you do is
11 sit down with the trappers in the local community and
12 negotiate where historically they have trapped. In
13 that case, it may or may not be a defined line on the
14 ground.

15 Q. In that case, what will it be?

16 A. The navigable reach of a river
17 system, it could be that type of thing. Trappers--

18 Q. Just one moment.

19 MR. MARTEL: Could I ask: In your
20 experience, do you think the trap lines that exist
21 today as they exist are sufficiently large for, let's
22 say, a native family to really make a living from?

23 MR. KENRICK: It would depend on the trap
24 line. A good number -- overall the general conclusion
25 is most trap lines are underharvested. That would tell

1 me that a person could get more fur off of it than they
2 are actually getting.

3 There is a difference -- I have drawn
4 some illustrations around Fort Severn where there are
5 some traps lines that would be referred to as, if you
6 will, community trap lines. A lot of the elders trap
7 there. Because it is so accessible to the community,
8 one could argue that perhaps those should be a little
9 larger. They are actively trapped, perhaps in some
10 cases, overly trapped, but when you get into the inland
11 portion distant from the community, generally they are
12 underharvested.

13 MR. MARTEL: Is that because there is no
14 market? I know the big sale that goes on in North Bay
15 annually, but is there a sufficient market?

16 MR. KENRICK: In that environment up in
17 the far north, I think it is a matter of the cost of
18 getting to the trap line is worth more than the value
19 of the furs you are going to get off of it, just to go
20 in by helicopter.

21 The value of furs sold at fur sales is
22 about \$15-million annually. In addition, there is a
23 value of meat consumed and that's been estimated in a
24 report at about \$8-million.

25 Muskrat provide the greatest number of

1 pelts, just over half a million, of which 21 per cent
2 come from the north. Beaver account for about 133,000
3 pelts of which 77 per cent come from the north. Those
4 two species, muskrat and beaver, account for 75 per
5 cent of the number of pelts harvested. It is
6 interesting to note when we are dealing with possible
7 conflicts that both of those are aquatic species.

8 As I mentioned before, in the vast
9 majority of trap lines in the province the harvest is
10 less than the quota, the resource is generally
11 underharvested. That is a little dangerous to say in a
12 general statement, but if you just look at totals
13 that's true.

14 Trappers also have an interest in timber
15 management planning. Most questions relate to concerns
16 over impacts of logging and an interest in the location
17 of roads to access their trap lines. Ministry meets
18 regularly with the Ontario Trappers Association. In
19 fact, we have a long-standing relationship of working
20 together on such things as joint publications and
21 training. Even more frequently, the Ministry meets
22 with local trappers, trapper councils, Indian bands and
23 individual trappers.

24 Although trapping is -- and you will
25 notice when I had the figure up about labour force,

1 you will note that trapping didn't show a significant
2 number in terms of size on that chart. I would like to
3 make the point though that although it may not be a
4 large number in terms of jobs in a raw sense, in some
5 of the communities it is a source of income for which
6 there are few alternatives, such as some of the
7 northern native communities.

8 Move on to agriculture. By way of
9 background, this photograph here comes from the Earleton
10 area. For those of you that have driven north on
11 Highway 11, it looks a little out of place to drive
12 over the hill at New Liskeard and suddenly look out on
13 a clay belt that looks very much like it was plucked
14 out of southern Ontario. This is the type of landscape
15 we are talking about.

16 Again, the agricultural industry is
17 relatively small in the area of the undertaking. Stats
18 Canada reports a labour force for northern Ontario of
19 about 5,000 people out of the 132,000 in the provincial
20 agricultural labour force.

21 The Ministry of Agriculture and Food,
22 through a land classification system and its reference
23 in the Provincial Food Land Guidelines, designates land
24 as class 1, 2, 3, 4 as primary agricultural lands. 83
25 per cent of the Class 1 to 3 soils, the prime lands,

1 are located outside the area of the undertaking in
2 southwestern, central and, to a lesser extent, eastern
3 Ontario.

4 Class 2, 3 and 4, and I think the only
5 Class 2 soils exist in the area around New Liskeard,
6 but in the north are adjacent to the Ottawa River near
7 Renfrew near Huntsville, North Bay, Sudbury, Sault Ste.
8 Marie, Thunder Bay, Dryden and Fort Frances.

9 The largest area of Class 2, 3 and 4
10 soils exist in both the little clay belt, New
11 Liskeard/Earlton area and the great belt stretching
12 from Cochrane to Hearst.

13 I don't think I will go into it in
14 detail, but in the document there is a Figure 28 that
15 is there to illustrate the type of negotiations and
16 discussions we have from time to time with the Ministry
17 of Agriculture and Food. And, just to highlight it
18 very briefly, land that was attractive or subject to
19 the Provincial Food Land Guidelines in the north that
20 was attractive for agricultural purposes, it was also
21 attractive for forestry purposes. And what we needed
22 to do during the strategic planning exercise was to
23 sort out, to some extent, who was going to use what
24 land for what purposes.

25 What we came up with is a critical area

1 where we made a commitment that major timber management
2 investment would not be made which would jeopardize
3 subsequent uses for agriculture, and basically it is
4 the prime land that is in tight to the existing
5 agricultural communities, it is infilling to some
6 extent. It has got a road structure adjacent to it.

7 In many cases, it is also land that was
8 partially cleared as a result of pulp wood cutting in
9 the early days, so it was attractive from a land
10 clearing point of view.

11 Adjacent to that and covering -- by the
12 way, that amount of area covered an additional 107,000
13 hectares which was about a 60 per cent increase over
14 the present agricultural uses area.

15 The supplementary area that is shown on
16 that, the agreement we came to in recognition that it
17 was prime land for both agriculture and timber
18 production, it was also the area that was close to the
19 mills, is that investment in forestry could be put
20 there, but there was a clear understanding that if
21 markets changed and, for instance, in the northern clay
22 belt the demand for agricultural land expanded rapidly,
23 we understood that that investment was in jeopardy. It
24 is sort of a use at your own risk approach.

25 Again, that's an illustration of the

1 types of discussions we might have with that industry.

2 Moving on to commercial fishing. As I
3 mentioned before, there are approximately 180 species
4 of fish in Ontario, about 40 of which are fished
5 commercially. The main Great Lakes species would be
6 smelt, yellow perch, white fish and herring. In north
7 inland waters the main species were white fish, walleye
8 and suckers.

9 If I might draw your attention to Figure
10 29 shown here which is off of page 108. The number of
11 persons employed in the industry in 1985 amounted to
12 about 1,500; capital investment of about 58-million;
13 and value of harvest about 35-million.

14 The point to note here is that the Great
15 Lakes account for 77 per cent of the employment and 96
16 per cent of the value of the harvest. To a very large
17 extent that's coming out of Lake Erie. The value of
18 northern inland waters; 133 people employed, capital
19 investment of about 3-million out of the 58-million,
20 and value of harvest a million three out of 35-million.

21 Once again, although those would not
22 suggest a major contribution to the economy in the
23 north from commercial fishing, again, particularly in
24 some native communities it is a source of income for
25 which there are few alternatives.

1 One could list such Bands as Sandy Lake,
2 Round Lake, McDowell, White Fish Bay, Rocky Bay, Fort
3 William, all do commercial fishing in values somewhere
4 between \$10,000 and \$100,000 a year.

5 The most common discussions with
6 commercial fishermen -- I might mention before I go on
7 that in addition to the value of that type of fisheries
8 commercially, in the far north particularly, this type
9 of activity is a source of local food and it is an
10 important source.

11 Fish quotas are frequently discussed, the
12 health of the fishery, the provision of road accesses
13 is especially important to commercial bait fishermen,
14 access to bait fishing areas.

15 At the provincial level, we deal with the
16 Ontario Fish Producers Association and locally, again,
17 we are dealing with local fishermen, individual
18 fishermen.

19 If I might move on to commercial tourism.
20 I would like to preface my comments with a comment
21 about how difficult it is to get tourism facts and
22 figure and statistics. Stats Canada treats tourism as
23 a multi-sector portion of the economy. It is found in
24 figures on community business and personal services,
25 some of the service industry stuff that was up on the

1 screen before. It is found under categories such as
2 accommodation, food, beverage, recreation, retail,
3 transport and entertainment. It is not a direct
4 measurement.

5 There are some problems in definitions
6 between data that's collected for visitors - and I
7 would be considered a visitor here in Thunder Bay
8 staying at the hotel - and a tourist, which the
9 definition includes perhaps more pleasurable reasons
10 for being in Thunder Bay than my presence here today.
11 It creates some problems with the numbers.

12 To complicate things even further, the
13 federal and provincial governments tend to use
14 different distances for how far you have to travel from
15 home before you become a tourist, all of which means
16 that a lot of these numbers are estimates and you can
17 find a great many estimates if you get hunting around.

18 It is estimated that tourism directly
19 employs 179,000 people in Ontario, that's a 1986
20 figure, and another 244,000 directly.

21 Q. Indirectly?

22 A. Sorry, indirectly. Figure 30 which
23 was off page 109.

24 Q. I think it is page 110 in my...

25 A. Right again. Shows tourism

1 expenditures in 1985 at about \$8-billion. The other
2 thing to highlight perhaps on that is the biggest
3 source of tourism in Ontario is Ontario residents
4 themselves.

5 The progression I am going to go through
6 here is going to be to try and get from total value of
7 tourism down to the value of the sector of tourism that
8 most often interfaces with timber resources, the
9 hunting and fish camp operation. I have to use several
10 sources of data to get there, but that's the
11 progression I am going in.

12 The next figure shows the distribution of
13 tourism receipts in Ontario and if you look under -
14 that's found on page 111 - shows the distribution of
15 Ontario's tourism receipts, and for northern Ontario it
16 indicates a figure of 10.5 per cent. So the 10.5 per
17 cent of the \$8-billion I previously quoted is about
18 \$829-million in northern Ontario.

19 I appreciate that the definition of north
20 used here doesn't include the southern portion of the
21 undertaking. There is a portion of the Muskokas that
22 would be under the figure for southcentral buried in
23 the 65 per cent there, but I have no way of sorting out
24 our boundaries with their boundaries.

25 As mentioned before, the Ministry of

1 Northern Development and Mines currently estimate the
2 amount of tourism expenditures in northern Ontario to
3 829-million and that's the source of that figure. They
4 also estimate that northern Ontario tourism employs
5 43,000 people directly or indirectly.

6 We recently had access to another study
7 and it just illustrates, I believe, some of the
8 problems with the data and they estimate 28,100 people
9 directly, indirectly or induced person areas of
10 employment and that's based on a 1985 study that was
11 prepared for the Ministry of Tourism and Recreation.

12 Tourism -- I mentioned previously,
13 tourism by definition deals with visitors, all of whom
14 do not travel for recreational purposes. In the north,
15 the hunting and fishing lodge industry is the component
16 that is mostly in contact with the activities of the
17 timber industry.

18 To get some detail on that portion of the
19 industry, I had to rely on a 1979 study of that sector
20 prepared for government in the Northern Ontario Tourist
21 Outfitters Association. It estimated northern direct
22 employment in that sector of the industry - and again
23 that is the hunting and fishing lodge industry - at
24 about 15,000 people. Tourism expenditures identified
25 in that study amounted to 120-million in direct

1 expenditures and an additional 60-million in indirect
2 expenditures.

3 If you look in the document itself, you
4 will find a figure smaller than that and what I have
5 done to try and bring it up to date is adjust that
6 upwards to reflect 1986 dollars based on something
7 called a Tourism Price Index.

8 Another estimate, and it comes from the
9 1987 NOTOA White Paper on the Future of Tourism in the
10 North, and I will merely quote it, shows direct
11 expenditures of about 300-million for the fishing and
12 hunting camp sector.

13 The Ministry of Tourism and Recreation in
14 1987 estimated there were about 1,500 tourism
15 accommodation businesses, including about 800 fishing
16 and hunting camps in northwestern Ontario and
17 northcentral, and about 1,200 tourism accomodation
18 businesses including another 800 hunting and fishing
19 camps in northeastern Ontario.

20 The 1979 study, although it is dated and
21 I understand that there has been some funding provided
22 to update that study in the near future, provides some
23 insight into the variation amongst those hunt and fish
24 camp businesses across the north.

25 If I could refer you to page 114 and the

1 map which shows the distribution of hunting and fishing
2 establishments in northern Ontario and, again, that
3 came out of that study in 1979. Just percentages on
4 there: 28 per cent of the businesses are in Kenora -
5 those are territorial districts - 7 per cent, Rainy
6 River; 12 per cent, Thunder Bay; 15 per cent, Algoma;
7 and a low of 3 per cent in Cochrane.

8 The number of establishments basically
9 decreases as we go from west to east and it decreases
10 as we go from the southern portion of northeastern
11 Ontario to the northern portion. The number of labour
12 intensive American-plan camps decreases as we go from
13 west to east.

14 Q. What do you mean by American-plan
15 camp?

16 A. It provides dining room facilities
17 and food as opposed to housekeeping accommodations
18 where you cook your own, which means there are maids
19 and cooks and purchasing food. The value added from
20 that type of an operation is a lot greater than it
21 might be from another type of operation.

22 Q. And there are more of those...

23 A. In the northwest.

24 Q. Okay.

25 A. Occupancy rates at those types of

1 business are the highest in the northwest and the
2 northcentral in May and June which would suggest the
3 fishing season, and elsewhere in July and August, which
4 reflects the family travel months.

5 Revenues and market values of properties
6 decrease as one goes from northwestern Ontario to
7 northeastern Ontario, and also as we go from the
8 southern portion of northeastern Ontario to the
9 northern portion of northeastern Ontario.

10 Outpost camps generate the highest
11 revenues as a percentage of their market value. Guests
12 in the northwest are about 90 per cent U.S., the
13 balance of the province, Canadians and Ontario
14 residents form the bulk of the guests, and the hunting
15 client is largely Canadian.

16 I have used the terms American plan and
17 outpost camps and I will just use two slides to
18 illustrate the difference.

19 This is a business on Eagle Lake and
20 basically it is an American-plan operation: Dining
21 room, licensed, maid service, guide service, boats, the
22 rest of it. This is the nature of many and there are
23 some - I will just qualify it - there are some major
24 lodges that are outpost remote.

25 This is typical, if you will, outpost

1 operation in Wawa district, the major investment being
2 the cabin and the aircraft. I will get into it when I
3 talk about the issues a little more, but this is the
4 type of business that the issue of remoteness is the
5 most important.

6 I might also mention that I tried to make
7 the point yesterday, that I view our Ministry as one of
8 the environment ministries, we are also probably a
9 major tourism ministry in this province.

10 The Ministry through its outdoor
11 recreation program -- I will quote some figures here.
12 1985-86, 7.5-million people visited our provincial
13 parks, 3-million people fished, used some of the
14 resources that we manage, about 700,000 people
15 purchased hunting licences, between 2 and 4-million
16 people enjoyed some of the non-consumptive uses of
17 wildlife.

18 Collectively, these 13-million people
19 directly spent a little over \$800-million. The
20 majority of those people would be classed as tourists
21 in that they travelled more than 40 miles from their
22 place of residence for purposes of pleasure.

23 Another initiative that the Ministry has
24 started recently is promoting Crown land as a
25 development tool and through that we are looking at

1 selling land, leasing it, disposing of it for
2 commercial and cottaging purposes.

3 Throughout the area of the undertaking
4 there is continuous dialogue with the tourism industry,
5 and my personal experience would be probably more than
6 with any other industry. The topic of discussion is
7 generally the quality of hunting and fishing; more
8 specifically, it centres around the topics of roads and
9 wilderness. The industry itself views roads in
10 different ways. Accessible base lodge operators tend
11 to want roads upgraded and maintained; the remote
12 facility operators, largely the outpost, desire
13 continued remoteness and no roads.

14 The remote tourism industry - and I am
15 sure this will come out later - but it feels that roads
16 and public access that they bring are generally an
17 unnecessary intrusion into remote areas used by their
18 guests. Operators of remote camps feel that it
19 threatens their very existence. Needless to say, to a
20 great many of residents, particularly in northern
21 communities, they want access to these same resources
22 and that is the rock and the hard place we find ourself
23 between most of the time.

24 While roads must continue to be dealt
25 with on their individual merits, progress on the issue

1 is being made through continuing dialogue and the most
2 notable example of that was the joint timber industry
3 and tourism industry involvement in the production of
4 the Timber Management Guidelines for the Protection of
5 Tourism Values and this document will be discussed and
6 addressed by Panel 8.

7 Again, we deal with tourism groups at
8 provincial, regional and local levels. We meet
9 regularly with groups such as the Northern Ontario
10 Tourist Outfitters Association, Regional Tourism
11 Associations, local associations of camp operators,
12 individual lodge owners, outpost operators and air
13 services. That covers the commercial stakeholder
14 groups that I was going to address.

15 If I may, I will move on to the
16 recreational stakeholder groups. One point, as I
17 start, that these groups are made up of both Ontario
18 residents enjoying local Ontario resources and those
19 that travel longer distances, and those people who
20 travel the longer distances, both residents and
21 non-residents, are therefore tourists also.

22 1985, there were about 3-million anglers
23 that fished Ontario waters. About 2.3 or 75 --
24 2.3-million or 75 per cent of those were residents to
25 the Province of Ontario. 43,000 were Canadians from

1 other provinces, largely Manitoba, and fishing in the
2 northwest and 690,000 were non-Canadians, largely
3 Americans. It is interesting to note a little over
4 800,000 were children under 16 years of age.

5 85 per cent of all fishing occurs during
6 the period from April to September. During this time,
7 83 per cent of the residents and 96 per cent of the
8 non-residents' sport fishing effort is expended. More
9 than half of all of that effort occurs in July, August
10 and September. The significance of that, I think, is
11 in some cases it allows you to temporally separate some
12 activities. If most of the fishing on a lake occurs in
13 a short season, then perhaps some of the other things
14 you might wish to do around the lake could happen in
15 the off seasons.

16 I might deal with Figure 33 which is
17 found on page 118. This is the distribution of angler
18 days, a person fishing for a day, if you will, expended
19 by anglers -- in an attempt to show some distribution
20 across the province. Again, resident anglers generate
21 a total of 29-million angler days, whereas
22 non-residents generate a total of just over 5-million
23 for a total of 34.4 million.

24 I might show that most resident anglers -
25 I think the key points on this - most resident anglers

1 basically fish in southern Ontario; the central region
2 shows up there as 28.5 per cent. Non-resident anglers,
3 the northwest is attractive. Over 44 per cent of all
4 sport fishing in the province takes place within the
5 area of the undertaking. 41 per cent of the resident
6 angling takes place within the area of the undertaking,
7 and 64 per cent of the non-resident angling takes place
8 within the area of the undertaking, and about half of
9 that takes place in the northwest.

10 That distribution is a result, I believe,
11 of three or four factors. One, the relative abundance
12 of water in the northwest that was discussed yesterday,
13 the quality of fishing, the distance from urban
14 Ontario, and that explains a lot of the fishing in the
15 eastern region, Algonquin, southwest and central and,
16 of course, the distance to major U.S. border crossings.

17 Figure 34 found on page 119 shows fish
18 retained by anglers. I won't go into it in detail, but
19 the most sought after species by residents and
20 non-residents alike are trout, bass and walleye.
21 Walleye, smelt and perch account for 64 per cent of the
22 harvest. In total, anglers in Ontario caught about
23 144-million fish and kept about 74-million of those.
24 They weighed 40-million kilograms and resident anglers
25 accounted for 75 per cent of that harvest.

1 I will just note that in the survey that
2 most of this information comes from anglers indicated
3 the most important elements contributing to the
4 enjoyment of their trips were water quality, natural
5 beauty, weather, access to wilderness - that is
6 interesting term, a bit of a dichotomy there - and
7 availability of desired species. Other panels that
8 come along will address generally all of those topics
9 except for weather.

10 If we might turn to Figure 35 which is
11 found on page 120 and basically indicates angler
12 expenditure for both residents and non-residents. The
13 figure on the left shows resident expenditure at about
14 \$696-million, non-resident expenditure at about
15 \$284-million. 84 per cent of the expenditures from
16 residents are a result of transportation, food and
17 lodging cost. That compares with about 56 per cent of
18 the non-resident expenditures for transportation, food
19 and lodging cost. The other large component for the
20 non-resident is noted as packages and that is made up
21 of things like aircraft rental, lodge and charter boat
22 rates.

23 The 1985 survey that the Ministry
24 undertook indicated that over 100,000 anglers reported
25 they belonged to the Ontario Federation of Anglers &

1 Hunters, 13,000 indicated a membership in the
2 Federation of Ontario Naturalists, 58,000 in the
3 Canadian Wildlife Federation, 89,000 in local game and
4 fish clubs. We deal with all of these organizations at
5 both a provincial, regional and local basis.

6 I might note here that this is a
7 self-reporting figure where people indicated
8 memberships in various organizations, and I am aware of
9 the fact that the Ontario Federation of Anglers &
10 Hunters, for instance, I believe they quote their
11 membership at about 72,000.

12 Q. Just one question on this, Mr.
13 Kenrick. Are you aware as to whether employees of the
14 Ministry of Natural Resources are members of either of
15 those two groups, the Ontario Federation of Anglers &
16 Hunters or the Federation of Ontario Naturalists?

17 A. Yes, particularly, as a result of the
18 fact that we live in a lot of the smaller communities,
19 not only are staff members members of these groups as
20 well as most other groups in those small communities,
21 but in many cases we are founding members of them.

22 Q. Thank you.

23 A. If I can move on to hunting. The
24 1983 estimate indicated that 9.8 per cent of Canadians
25 hunted including 7.3 per cent of Ontario residents.

1 Figure 36 on page 123 --

2 Q. I understand there are a couple of
3 corrections to that before you get into it.

4 A. Yes, there are. Would you like me to
5 highlight them?

6 Q. Yes, please.

7 A. The total at the bottom of the
8 resident column now says 427,300. It was a typing
9 error, it previously he showed 327,300. We have also
10 added figures for the harvest under small game at about
11 3-million and the harvest -- or that is under resident
12 harvest, and the non-resident harvest for small game at
13 189,000.

14 90 per cent of all residents - I
15 mentioned before, hunting is largely a resident
16 activity in the province - 90 per cent of all hunters
17 are residents of the province. 97 per cent of the
18 province's moose hunters are resident, 99 per cent of
19 the province's deer hunters are resident, 95 per cent
20 of the province's small game hunters are resident. The
21 one notable difference there, 65 per cent of our bear
22 hunters are non-resident.

23 If I may, I will move on to Figure 37
24 found on page 124. This indicates the distribution of
25 hunters across Ontario based on 1979 data. I will just

1 highlight a few things here. The greatest
2 concentration of resident hunters is in the northeast
3 and Algonquin regions, including 60 per cent of the
4 resident deer hunters. 53 per cent of all resident
5 hunters hunted the four southern regions, that includes
6 63 per cent of the resident small game hunters. Again,
7 proximity to the urban centers.

8 Q. And these regions are MNR
9 administrative regions?

10 A. That's correct. 75 per cent of all
11 non-residents hunted the four northern regions. In the
12 northwest has -- the northwest administrative region
13 has the greatest number of non-resident hunters,
14 including 42 per cent of the non-resident moose
15 hunters.

16 I couldn't leave my home region out
17 without saying something. So the resident moose hunt
18 accounts for 35 per cent of the northern region -- 35
19 per cent of it occurs in the northern region and 32 per
20 cent of the resident bear hunt.

21 Why the distribution? Distribution of
22 game, to some extent, would explain it. To a much
23 greater extent, the distance to borders and the
24 proximity to the urban centres in Ontario.

25 If I can move on to Figure 38 found on

1 page 126 which indicates expenditures by hunters. Only
2 two points here. The total is \$139-million and 88 per
3 cent of it is generated by residents. Again, to some
4 extent, it shows a substantial contribution by hunting
5 to the tourism industry.

6 Topics of discussion between the Ministry
7 and hunters generally include the health and abundance
8 of various species and habitat, harvest limits, the
9 desirability of roads. And, again, a dichotomy within
10 the group itself; many hunters drive to their hunting
11 areas. For them, roads disperse hunters and give them
12 access to a greater area. Abandoned logging roads, for
13 instance, are especially attractive for those with
14 specialized equipment like ATVs. For those hunters
15 that fly in or use water routes, roads are seen as a
16 threat to their hunt.

17 The Ministry deals with hunting
18 interests, again, at a provincial, regional and local
19 level. Regular dialogue exists with such groups as the
20 Ontario Federation of Anglers & Hunters, Northern
21 Ontario Tourist Outfitters Association, Indian bands,
22 local game and fish clubs and individual hunters.

23 If I may move on to cottaging. There are
24 about 436,000 cottages estimated to be located in
25 Ontario and, again, it is a source of data that is hard

1 to get. Ontario Hydro, for instance, gives us one
2 estimate based on power hookups and you get parts of
3 other estimates from local municipalities and some of
4 our own records, but the best estimate I could come up
5 with was 436,000. This makes Ontario one of the most
6 cottage jurisdictions in the world. Over 46 per cent
7 of all Ontario residents either own or visit a cottage
8 annually and it accounts for about 77-million occasions
9 per year.

10 Q. What do you mean, 77-million
11 occasions per year?

12 A. I believe, and I may have to go back
13 and check, but I believe that again refers to a person
14 for a day.

15 MR. MARTEL: Doesn't the Crown sell most
16 of -- or lease most of the land to the people who are
17 immediate cottagers?

18 MR. KENRICK: In the north that would
19 certainly be true. One -- in the south, a great deal
20 of it is private land.

21 MR. MARTEL: That causes the difficulty
22 in getting the proper assessment, I guess?

23 MR. KENRICK: That's correct. On
24 average, 86 per cent of Ontario's cottages are owned by
25 residents of Ontario. In northern Ontario, 72 per cent

1 are owned by Ontario residents.

2 Nearly 62 per cent of the province's
3 cottages are located within the area of the
4 undertaking. The most popular locations are the lake
5 countries stretching from Muskoka through Lake of Bays
6 eastward through Haliburton, Bancroft to the Rideau
7 Lakes. Northern Ontario accounts for 22 per cent of
8 the province's cottages.

9 If I can refer you to Figure 39 from page
10 128 up on the screen, shows the distribution of
11 cottages across northern Ontario. The largest
12 percentage being in northeastern Ontario, and I think
13 an observation can be made: Again, the proximity to
14 the urban centres; and the lowest number being the
15 northern administrative region and I think distances
16 from major population centres would explain that.

17 To clarify some of the more popular
18 locations, the areas around Kenora and Fort Frances in
19 the northwest, Thunder Bay and Atikokan in the
20 northcentral, generally the Highway 17 corridor
21 straight from Sault Ste. Marie through to North Bay in
22 the northeast, and local areas around Kirkland Lake,
23 Timmins and Kapuskasing in the northern region.

24 Based on a conservative estimate of
25 \$1,800 per year per cottage, cottagers account for

1 about \$784-million in annual recreational expenditures.
2 I might mention that a more recent study - that figure
3 has its roots in a Muskoka study about 15 years old - a
4 Woods Gordon study that was undertaken recently, and I
5 believe we only have the preliminary results, suggests
6 that the annual expenditure now is closer to \$4,800 a
7 year.

8 MR. FREIDIN: Q. Per cottage?

9 MR. KENRICK: A. Per cottage.

10 MR. MARTEL: Are they winterizing?

11 MR. KENRICK: It includes capital
12 improvements like that, distance, perhaps longer time
13 periods at the cottage, making the cottage fancier,
14 yes. Again, cottagers represent both a major
15 stakeholder group in Ontario as well as a major source
16 of tourists.

17 In dealing with tourism groups, not
18 exclusively, but sometimes as part of the timber
19 management planning process the usual topics of
20 discussion are retention of forest coverage adjacent to
21 either cottage lots or cottage lakes, the provision and
22 maintenance of road access, the type of site
23 preparation that may be used adjacent to the area, the
24 location of access points or waste disposal sites that
25 may be created or need to be created.

1 We maintain dialogue with such groups as
2 the Ontario Cottagers Association, but more frequently
3 deal with municipalities, local cottage associations
4 and individual cottagers.

5 If I can move on to provincial park
6 visitors. I mentioned previously Ontario boasts a
7 system of 270 parks and Figure 140 -- sorry, Figure 40
8 from page 130 indicates a 1986 figure for the
9 distribution of Ontario park visitors.

10 And just to note a few: The largest
11 numbers are in the south. Central and southwestern
12 regions are not within the area of the undertaking, but
13 a little bit of the eastern region is and all of --
14 from Algonquin through to northern on that chart.
15 Based on that, about 36 per cent of the visitors
16 visited parks in the undertaking. It amounted to about
17 2.6-million visitors out of the 7.45.

18 As I mentioned, most of the majority of
19 the park use is in the south near the urban centers.
20 This reflects not only distance to urban centres and
21 border crossings, but also the nature of the parks that
22 are located in northern Ontario and southern Ontario.
23 Lower density, interior camping and wilderness
24 activities are more apt to take place in the larger
25 parks in the north.

1 The next Figure 41 indicates the origin
2 of campers as opposed to visitors in 1986 by
3 percentage, and I would just like to highlight three
4 numbers there, if I may. Most residents camp in the
5 Algonquin region, 93 per cent; most other province
6 visitors camp in the northwestern region, again the
7 proximity - it is the Manitoba influence - and most
8 U.S.A. and other visitors camp in the northcentral
9 region. Again, somewhat the same reasons as I have
10 mentioned in previous topics, distance to urban
11 centres, distance to border crossings.

12 If you will look at Figure 42 on 133
13 shown on the screen here, provincial park visitor
14 expenditures, a 1986 figure, and this refers to dollars
15 spent within 40 kilometres of a park. Again, the
16 expenditures are highest in the central, southwestern
17 regions in the south, Algonquin region \$17-million,
18 northeastern 14, northcentral 14, northwestern
19 5-million, and northern 2.9 for a total of
20 \$198.1-million in 1986.

21 With the exception of Lake Superior and
22 Algonquin Park, timber management activities do not
23 occur in provincial parks, but the process we are
24 dealing with here considers the impacts on adjacent
25 land areas including the provincial parks within the

1 area of the undertaking.

2 People who are interested in the parks
3 program also take a major interest in timber management
4 planning. Most often these people are interested in
5 broad-based topics such as water quality, road access,
6 site-prep methods, permitted uses in parks and the
7 establishment of new parks.

8 The Ministry's staff regularly discuss
9 parks issues with a host of groups. Provincially we
10 deal with the Canadian Parks and Wilderness Society,
11 the Sierra Club, the Wildlands League, Federation of
12 Ontario Naturalists and the World Wildlife Fund.

13 On a more local level we maintain
14 contacts with local recreational groups and field
15 naturalists clubs. As I mentioned before, our staff in
16 many cases are members of these groups and other groups
17 and, in some cases, are amongst the founding members.

18 A broad outdoors interest shown by
19 Ontario residents doesn't stop at the boundaries of our
20 parks, nor is it defined only to include hunters and
21 fishermen and tourists. A broad-based interest and
22 participation in outdoor recreation is, in many cases,
23 synonymous with Crown land use and is reflected in a
24 study that was completed in 1977.

25 That study looked at broad recreational

1 use in the 95 per cent of the five northern regions
2 that is Crown land. Just to put that in perspective,
3 the Crown land component of those regions ranges from
4 about 96 per cent in the northwest to about 34 per cent
5 in the Algonquin region. If I can draw your attention
6 to Figure 44 from page 136. I won't go through the
7 numbers, those are the popular uses of Crown land down
8 the left-hand column. Crown land accounts for four and
9 a half times more occasions than does the provincial
10 park system.

11 I might note that accommodation in many
12 cases is on private property, at lodges or cottages,
13 but the land base that is used for recreation is the
14 adjacent Crown land, water skiing, fishing, whatever.
15 Total recreational expenditures estimated in that study
16 accounted for \$617-million annually.

17 An even broader view of outdoor use and
18 interest comes from the results of the Ontario
19 Recreation Survey published in 1977. This database
20 particularly identifies those who enjoy outdoor
21 resources in a more passive, non-consumptive manner or
22 those who place a value on it largely in a vicarious or
23 indirect sense.

24 Figure 45 shown on the screen, and that
25 is a duplicate of what is shown on page 137 of the

1 witness statement, shows some of the more popular
2 activities. Just to highlight a couple of them:
3 Recreational driving, 64 per cent of Ontario residents
4 partake in that; walking, 55 per cent - just
5 highlight - photography, birds, animals or fish in the
6 natural surroundings, 13 million people in 1982 -
7 sorry, that is per cent - 13 per cent of Ontario's
8 population. In 1982 that accounted for 1.2-million
9 people with direct expenditures in excess of
10 \$60-million.

11 The Ministry deals again with these
12 groups representing Crown land use. Such provincial
13 groups include the Canadian Recreation Canoe
14 Association, Canadian Wildlife Federation, Federation
15 of Ontario Hiking Trail Clubs, Ontario Cycling
16 Association, World Wildlife Fund. In addition, we deal
17 frequently with local affiliates and interested
18 individuals.

19 Common items of discussion that relate to
20 the timber management planning process include
21 harvesting your canoe routes and portages or
22 cross-country ski trails, habitat concerns, discussions
23 again about either the provision or the destruction of
24 road access. I might mention that in many cases access
25 to those same Crown land resources has been provided

1 through the timber industry's road systems.

2 If I might move on to local and
3 traditional users, this is the third major category
4 that I had identified. The province is committed to
5 the principle that its resources belong to all of the
6 people of Ontario and will be administered in the best
7 interests of the total population, including the
8 special interest of residents in the location of the
9 resource.

10 As noted in previous evidence, local and
11 traditional users are considered a primary stakeholder
12 in the Ministry of Natural Resources' planning and
13 management.

14 Q. What do you mean by a primary
15 stakeholder in that sentence? I am referring you to
16 the top of page 139.

17 A. I believe, and I will quote from the
18 Strategic Land Use Plan for Northeastern Ontario which
19 was also quoted on as part of Panel 1:

20 "The Ministry will actively involve local
21 people and traditional resource users in
22 the preparation of its land use plans.
23 The public participation program will
24 emphasize the identification and
25 consideration of the needs and wants of

1 this group as a priority."

2 There are - and I don't know whether you
3 want to discuss it now - but there are some caveats, if
4 you will, that accompany that and they were explained
5 by Panel 1.

6 Q. No need to go over that again.

7 A. I just might mention, the local and
8 traditional users refer to all local residents in a
9 particular area of the province and these individuals
10 may well belong to any, some, or all of the stakeholder
11 groups previously referred to. There is some overlap.

12 The decentralized structure of the
13 Ministry lends itself, I believe, ideally with dealing
14 with local issues. Program delivery, including timber
15 management, is done by district staff who reside in
16 communities located throughout the area of the
17 undertaking.

18 The Ministry makes extensive use of local
19 media both to announce projects such as the
20 commencement of the timber management planning process
21 and as a vehicle to explain the general activities of
22 the Ministry, resource reports, news releases, public
23 notices. I would like to highlight here just one I am
24 aware of this year where the public -- the costs for
25 public notice requirements for the timber management

1 planning activities in one district this year were in
2 excess of \$40,000. We are making a great use of
3 newspaper.

4 At the local level, Ministry staff
5 maintain regular contacts with broad-based interest
6 groups such as Chamber of Commerce, Boards of Trade,
7 service clubs, elected officials and local communities.

8 At a more regional level, the Ministry
9 maintains contacts with such broad-based groups as the
10 unorganized communities of groups representing the
11 unorganized communities of northern Ontario, Northern
12 Ontario Municipal Association and, therefore,
13 counterparts in the south.

14 At the local, regional and provincial
15 level, we maintain contact with other government
16 ministries, Ministry of Northern Development and Mines,
17 Environment, Ministry of Tourism and Recreation,
18 Culture and Communications.

19 In addition, we discuss various matters
20 with local elected representatives from both the
21 provincial and federal governments.

22 Issues of frequent discussion are varied.
23 They may range from specific road issues to much
24 greater topics, such as the health of the local
25 resource industries or the need for local economic

1 growth. The term local and traditional users also
2 refers to the native population in Ontario and, as
3 noted previously, native people can also belong to any
4 or all of the previously mentioned stakeholder groups.

5 As a Ministry, we deal with native
6 interests and issues at many levels. Some issues may
7 be national or provincial in scope and in those cases
8 we are generally having discussions with groups such as
9 the Nishnawbe-Aski Nation in the Treaty 9 area or Grand
10 Council Treaty No. 3.

11 Q. I understand that Mr. Crystal will be
12 referring to some of those discussions?

13 A. That's correct. In a regional and
14 local context, the Ministry deals most frequently with
15 regional native tribal councils such as the ones I am
16 familar with, the Mushkegowuk and Shibogama Councils.

17 Most frequently, however, our staff
18 across the province are dealing with local bands, band
19 councils, band chiefs, or individual natives to discuss
20 items of local concern. Frequently, these items
21 include local fishing, hunting and trapping matters and
22 do include matters such as timber management adjacent
23 to reserve lands.

24 I might mention that this Class
25 Environmental Assessment for timber management

1 recognizes the special interests that natives generally
2 have in natural resource matters. In fact, specific
3 notice of each step of the timber management planning
4 process is always given to the band councils of each
5 Indian reserve in the forest management unit and any
6 other native community organization which is
7 potentially affected.

8 The references to that can be found,
9 again it was mentioned, page 7 of Part I of the
10 Assessment and on pages -- the public notice
11 requirements on pages 153, 156, 158, 161, 165 and 170.

12 The last group, the general public. This
13 group is composed of a wide cross-section of
14 individuals, taxpayers, investors, vicarious users of
15 the environment. These individuals are not normally as
16 close to or as directly involved in management and use
17 of Crown resources as the local and traditional users,
18 however, they do have a genuine interest, particularly
19 as it relates to the allocation and expenditure of
20 taxpayers' dollars, the health of their investment
21 perhaps in resource-based economy, or the protection
22 enhancement of values such as natural heritage values
23 that they feel are important.

24 To a large extent, the values of this
25 group are identified through the political process.

1 For example, by the money and staff the legislature
2 appropriates to various programs of the Ministry of
3 Natural Resources, the number of contacts made by mail,
4 telephone or in public with Ministry of Natural
5 Resources staff or elected officials.

6 In addition, we send staff to such
7 occasions as sportsmen and trade shows, the many open
8 houses that we hold associated with various planning
9 programs, timber management plans, fisheries plans, the
10 land use planning exercises. We meet many of these
11 interests through the interpretive programs in the
12 provincial parks system and the many day-to-day
13 comments made to Ministry of Natural Resources field
14 staff.

15 MR. FREIDIN: Mr. Chairman, that is the
16 end of Mr. Kenrick's portion of the panel. It might be
17 a convenient time for a break. I can advise you that
18 we will, in all likelihood -- a good likelihood that we
19 will finish by the noon break.

20 THE CHAIRMAN: Very well. We will break
21 for 20 minutes. Thank you.

22 ---Recess taken at 10:45 a.m.

23 ---Upon resuming at 11:15 a.m.

24 THE CHAIRMAN: Thank you. Be seated,
25 please.

1 Mr. Freidin, before we continue, the
2 Board wishes to make a statement concerning, I guess,
3 some procedural issues. This is not, by the way,
4 dealing with the motions that were before the Board
5 yesterday, we will deal with that at another time.

6 Mr. Kenrick, this matter which deals with
7 your evidence is not in any way meant to be derogatory
8 to yourself or your work, in fact, it is probably
9 complimentary in terms of the fact that your report was
10 formulated in a fashion that was clear and appeared to
11 require little oral embellishment on your part.

12 What the Board wants to make clear to all
13 the parties is that it does not intend, with respect to
14 future witness panels, to sit here and have a witness
15 go through a report word for word, paragraph for
16 paragraph, page by page. The report itself is before
17 the Board, it has been admitted as an exhibit. We have
18 told you before, and we wish to emphasize it, the Board
19 reads the documentation filed.

20 In a case -- and I take it, Mr. Freidin,
21 that this may be the first panel which has dealt
22 perhaps with the new format mentioned by Ms. Murphy
23 yesterday in the sense that the report is in the form
24 of prose with the supplementary documentation inserted
25 in the body of the report, and that format the Board

1 finds relatively easy to follow along and we would
2 trust that the other parties find the same.

3 The former procedure that you used with
4 respect to the witness statements appeared to set out
5 the points in point form and then somewhere else in the
6 report back up the points you wished to make with
7 supplementary documentation. But that necessitated, as
8 you know, a flipping around from the points made at the
9 outset to somewhere else in the document in order to
10 try and piece the two together. The prose format,
11 frankly, is easier to follow by both the Board, I would
12 suggest, counsel and the public at large.

13 But having said that, once it is before
14 the Board in written form, the purpose of oral direct
15 evidence should be only not to repeat what is in the
16 report itself but to add to it, to supplement it, to
17 explain it or clarify it in areas that have to be
18 clarified.

19 Now, contrast, Mr. Kenrick, your evidence
20 in this report with perhaps the evidence given by Dr.
21 Osborn earlier, and notwithstanding that Dr. Osborn had
22 put before the Board much of the material in the
23 witness statement, his evidence was of the type that
24 probably needed clarification through oral direct
25 testimony and I am just using Dr. Osborn as an example

1 in terms of the type of evidence that he was giving in
2 this panel.

3 Perhaps, Mr. Freidin, and other counsel,
4 the way to present a report of this type is to ask the
5 witness whether or not the report was prepared by him
6 or under his direction, have it tendered to the Board
7 for admission as an exhibit, clarify anything that
8 needs to be clarified that is not in the report, and
9 then have the witness available for cross-examination.
10 The other parties can then cross-examine the witness on
11 anything that is in the report.

12 And that, the Board feels, will greatly
13 speed up the proceedings and it will inhibit the
14 tendency to duplicate what is before the Board in
15 written form and then, if we allow this to continue, is
16 put before the Board orally as well.

17 We have distribution of the witness
18 statements to the public at large and they as well as
19 us are able to read along. If they cannot read the
20 reports as submitted in the witness statement, then the
21 Board submits it will be equally difficult for them to
22 follow the oral evidence because it will require them
23 to read the transcripts. And if the transcripts
24 approximate what is in the written report, it is a
25 duplication.

1 And, frankly, it is a waste of money in
2 the sense that the transcripts are costly and the
3 transcript should really be dealing with evidence given
4 orally at the hearing on matters which are not
5 contained in the written documents or, as I said, on
6 matters that require further clarification.

7 So, again, Mr. Kenrick, we are not
8 criticizing you nor your work, but we feel that this is
9 the first panel that has really been put forward under
10 this new format or style of constructing the witness
11 statements and the Board does not intend to sit and
12 listen to a report that is in writing being repeated
13 orally.

14 So with that, we can continue on to the
15 other half of the panel.

16 MR. FREIDIN: Well, Mr. Chairman, I just
17 should advise you that the very topic that you raised
18 was a matter that I discussed with some of my people
19 during the break and we will, commencing with the next
20 panel, attempt to in fact do just as you have advised.

21 THE CHAIRMAN: Very well.

22 MR. FREIDIN: Now, Mr. Crystal's evidence
23 is to some extent covered -- his oral evidence will
24 cover some of the things in the report, there will be
25 some clarifications.

1 I don't believe the presentation will
2 take more than about an hour and a half. I would ask
3 that he be allowed to present it in that way,
4 particularly because it is an area which is an area
5 unfamiliar to most and I think it would be helpful to
6 in fact have Mr. Crystal give his oral presentation
7 even though he may be going through the document.

8 THE CHAIRMAN: All right. In fairness,
9 the Board just advised the parties of this and it would
10 be unfair, since you have presented, Mr. Crystal, your
11 evidence in a certain way and, I am sure, have been
12 briefed in a certain way.

13 The proof of the pudding, Mr. Freidin, is
14 the fact that we have taken for this panel so far about
15 two pages of notes and you can see, I am sure, from the
16 conduct of the hearing up to this date, I am into my
17 third hearing book in terms of notes. The reason being
18 is there is no percentage in copying down what is in
19 the written form in the statement itself other than
20 refer to page numbers.

21 MR. FREIDIN: I hear you loud and clear,
22 Mr. Chairman.

23 THE CHAIRMAN: Okay. Thank you.

24 MR. FREIDIN: Q. Mr. Crystal, you are
25 the author of Document No. 2 which commences at page

1 164 of the witness statement; is that correct?

2 MR. CRYSTAL: A. Yes, that's correct.

3 Q. And could you just outline briefly
4 the purpose of your presentation and how the paper or
5 the report is laid out, the approach that you are going
6 to be taking to explain the subject matters in your
7 report?

8 A. Yes. Well, Mr. Freidin, if it would
9 please the Board, I have prepared a set of handwritten
10 overheads which I intend to use as a guide throughout
11 this presentation. I think it will, to some extent,
12 help to overcome some of the problems that you have
13 just described.

14 So if I could approach the microphone
15 that we have set up here, and I will be pleased to do
16 as you have just asked.

17 Q. Yes, that's fine.

18 A. Yes. The purpose of the presentation
19 of this evidence is twofold. First of all, I thought
20 it would be appropriate to outline Ontario's position
21 and its understanding of legal obligations between the
22 government and Indian people concerning land and
23 natural resources.

24 Now, as you described in your opening, it
25 is not necessarily my purpose to provide this

1 information to the Board so that the Board would be
2 able to come to a determination of the issue of treaty
3 and aboriginal rights, but I think that it is important
4 to place that information into some context so that the
5 rest of the material that is heard by the Board has a
6 context within treaty and aboriginal rights. So that's
7 my first purpose.

8 Secondly, I would like to outline some of
9 Ontario's native affairs policy relating to lands and
10 natural resources. And while I have noted in this
11 overhead, the Board is not of course required to adhere
12 to this policy in making its order, it may be useful to
13 understand the general policy direction.

14 So my presentation really falls into two
15 parts. The first part will be sort of a brief legal
16 analysis of some basic judicial interpretation of
17 treaty and aboriginal rights; and, secondly, I will be
18 outlining some policy matters.

19 Q. I am just wondering before you take
20 that slide off, in the first point where you refer to
21 the understanding of legal rights and obligations
22 between government and Indian people concerning land
23 and natural resources, when you use the term Indian
24 people does that particular phrase have a particular
25 meaning or is that just sort of generally all native

1 people?

2 A. Well, in general, throughout this
3 presentation when I use the word Indian, I will be
4 describing status Indian people, people who are
5 registered Indians under the Indian Act, that's what I
6 mean by Indian in general.

7 And the law that has been decided in
8 courts to date on treaty and aboriginal rights has
9 generally -- and there is certainly some exceptions to
10 that and I am sure that in cross-examination some of
11 the case law relating to non-status people, while there
12 is not great deal of it, may very well come out, but
13 the basic judicial decisions have dealt with status
14 Indian people and that is what I will be covering in
15 the first part of the evidence.

16 Q. All right. Just in relation to the
17 second item on the overhead, when you refer to the
18 second part of the purpose being to outline Ontario
19 native affairs policy on lands and natural resources,
20 is that policy -- or does that section of the report
21 dealing with policy relate to Indians as you defined
22 them or will the evidence in that area be broader?

23 A. No, the evidence in that area will be
24 broader and that's why I use the word native instead of
25 Indian.

1 Q. Thank you.

2 THE CHAIRMAN: Mr. Freidin, are any of
3 these overheads subject to being made hard copies; is
4 that possible?

5 MR. FREIDIN: It was my intention to have
6 these and I think that somehow administratively it
7 slipped through the cracks.

8 THE CHAIRMAN: But it can be done; can
9 it?

10 MR. FREIDIN: Oh, yes.

11 MR. CRYSTAL: I may in my briefcase have
12 one or two hard copies if that would be useful.

13 THE CHAIRMAN: Well, I was just
14 suggesting that we should know now, if we are getting
15 it in hard copy, we may not have to copy all of this
16 down in detail.

17 MR. FREIDIN: We will provide in hard
18 copy. I apologize for not having it in advance, that
19 was our intention.

20 THE CHAIRMAN: Very well. Thank you.

21 MR. CRYSTAL: While I will be dealing
22 with the particular constitutional amendment which was
23 enacted in 1982; that is, Section 35(1), later on in
24 the presentation, I think it is appropriate at the
25 outset to bring this constitutional amendment to the

1 attention of the Board because that amendment which was
2 enacted on April 17th, 1982 when the Constitution was
3 amended has tremendous ramifications for the
4 interpretation of treaty and aboriginal rights in
5 Canada. So I bring this to your attention.

6 Section 35(1) says, and I know that you
7 can read it, but I want to say it anyway:

8 "The existing aboriginal and treaty
9 rights of the aboriginal people of Canada
10 are hereby recognized and affirmed."

11 And as I have noted on the slide, it is
12 clear since the enactment of Section 35(1) that there
13 is now constitutional protection for treaty and
14 aboriginal rights, but the issue which remains
15 undefined to date is what substance ought to comprise
16 those treaty and aboriginal rights and there is still
17 today great disagreement on that issue.

18 And I would hope that later on in my
19 presentation I can pinpoint some of the reasons for
20 those disagreements.

21 THE CHAIRMAN: Mr. Crystal, does the
22 reference to aboriginal under the definition that was
23 given earlier include Indians and status Indians or is
24 it just native peoples whose origin were here before
25 everyone else?

1 MR. CRYSTAL: Section 35(1) has a later
2 subsection, and I am not sure if it is subsection (2)
3 or subsection (3) which defines the aboriginal people
4 of Canada, and they are defined as Indian people,
5 non-status people, Metis people and Inuit people.

6 And so I think that is fairly inclusive
7 of the definition of native people that we have been
8 using. I would think that we can use the word native
9 and aboriginal generally interchangeably.

10 MR. FREIDIN: Q. And in relation to that
11 particular slide, Mr. Crystal, the last point where you
12 indicate that the rights have constitutional protection
13 but the substance of such rights remain unclear, even
14 though the substance of such rights remain unclear or
15 are not clearly defined, can you comment on what those
16 rights are likely to deal with or apply to?

17 MR. CRYSTAL: A. Yes. Well, the range
18 of issues that treaty and aboriginal rights might
19 relate to range from self-government, to sovereignty,
20 to any number of diverse matters, but there is one
21 matter which is clearly within the confines of treaty
22 and aboriginal rights and that is access to natural
23 resources.

24 And the reason that I say that is because
25 the treaties, most of the treaties which cover the area

1 within the undertaking include a term relating to
2 access to natural resources. So whatever else treaty
3 and aboriginal rights may mean, there can be very
4 little doubt that when we interpret those treaty and
5 aboriginal rights they would will have impact on the
6 way that natural resources are dealt with in native
7 issues.

8 Q. And just perhaps before you deal with
9 that slide, Mr. Crystal--

10 A. Yes.

11 Q. --at page 166 of your paper in the
12 second full paragraph you indicate, in the second last
13 line that:

14 "Uncertainty surrounding aboriginal and
15 treaty rights could have impact upon
16 the final order of the Board."

17 Could you explain what you meant by that
18 particular passage?

19 A. Well, when I was preparing this
20 material it is fair to say that I really did not have
21 any idea what background the Board may have in this
22 area and I have spent considerable time the last number
23 of years talking to large groups of people, or
24 certainly a large number of groups of people about
25 treaty and aboriginal rights and I found that their

1 understanding is not very strong.

2 And so when I give this evidence my fear
3 was that perhaps the Board might have some
4 misunderstandings about treaty and aboriginal rights,
5 and so my thought was perhaps the Board might think
6 that it was required to make an order in a particular
7 way because of some understanding that it had in treaty
8 and aboriginal rights.

9 So it is my intention to provide this
10 material so that the Board will have some understanding
11 when it makes its order. So is that responsive to your
12 question?

13 Q. Yes. Yes, that's fine.

14 A. If I might begin with a discussion of
15 the Royal Proclamation of 1763, I think that's an
16 appropriate point to begin a discussion of treaty and
17 aboriginal rights.

18 1763 is certainly an important date in
19 Canadian history. The British French conflict in North
20 America had just concluded and we are all familiar with
21 the battle of the Plains of Abraham and Wolfe and
22 Montcalm and the manner in which that conflict ended
23 and Britain, as the victor in that conflict, found
24 itself with a large mass of land in British North
25 America and I am sure the thought was that some

1 document, some policy document was required to
2 administer that land, and so the Royal Proclamation of
3 1763 set out a system of government for the British
4 after the British conquest.

5 I think it is fair to say that at that
6 time in 1763 there was considerable competition on the
7 seas for control of various lands in the new world and
8 the British were desirous of maintaining control over
9 the land that they had fought with the French over.
10 And I think it is fair to say that merely by planting a
11 flag in the terra firma and singing the national
12 anthem, one could not expect to maintain control.

13 If one wants to control a territory,
14 presumably it is necessary to have some support from
15 the inhabitants of the territory and most of the
16 inhabitants of this new territory were Indian people,
17 and so it was necessary in the Royal Proclamation to
18 set out an Indian policy. But the Royal Proclamation
19 is not merely an Indian policy document, it sets out
20 four different territories that are to be the
21 territories for their new land. I think those
22 territories were Quebec, Grenada, East Florida and West
23 Florida.

24 And it set out certain rules for trade
25 within those new territories and it set rules for

1 travel within those new territories. And these rules
2 that are set out in the Royal Proclamation of 1763, to
3 a great extent, had nothing to do with Indian policy at
4 all, but for the reasons that I stated earlier, it was
5 necessary to set out an Indian policy and that is
6 contained in the Royal Proclamation.

7 And that Indian policy can really be
8 summarized in two points. The first point is that all
9 of the land within the new territory which was unseeded
10 or unpurchased from the Indians as of 1763 was reserved
11 to the Indians as their hunting grounds. So we are
12 talking about a very large area which is reserved to
13 the Indian people through the Royal Proclamation of
14 1763.

15 Q. Mr. Crystal, you are referring to
16 Indian policy and Indian people. In this particular
17 context, could it be accredit to native peoples?

18 A. Well, perhaps fortunately at that
19 time the bureaucracy which we presently have didn't
20 exist and so there was not a need for distinctions
21 between, you know, native people.

22 I suppose it is also fair to say that at
23 that time most of the people would have been -- I
24 presume a large portion of the population would be
25 "pure blooded Indian people", there have been not that

1 much contact.

2 But, of course, when I talk about Indian
3 people now I talk about people who are registered under
4 the Indian Act as being status Indian people and there
5 was no Indian Act, of course, to be registered under.
6 So when I talk about Indian people I am talking about
7 the aboriginal people that existed on those lands at
8 that time.

9 Q. All right, thank you.

10 A. As I said, the first point of this
11 Indian policy was that all of the land which was
12 unseeded or unpurchased from the Indians as of 1763 was
13 reserved to the Indians as their hunting grounds.

14 But it is clear that it was not the
15 intention of the British government of the day that it
16 would be reserved to those people for ever and ever. I
17 think it is fair to say that it was the plan that from
18 time to time lands would be taken up for purposes of
19 settlement and agriculture and various resource-based
20 operations. And so the Royal Proclamation set out a
21 procedure whereby Indian people could surrender their
22 land to the Crown.

23 There had been, up until 1763, certain
24 land transactions involving the native people that, to
25 some extent, were filled with frauds and abuses on both

1 native people and the early settlers and in order to
2 avoid those frauds and abuses, the Royal Proclamation
3 states that Indians can surrender their land only to
4 the Crown, so there will now be a central land holding
5 agency, the Crown, and Indian people can surrender land
6 only to the Crown and the Crown will then be the party
7 responsible for distributing the land out to the
8 settlers.

9 The idea was that transactions between --
10 sort of independent transactions between Indian people
11 and non-native new arrivals was not appropriate. And
12 so the Royal Proclamation prohibited that activity.

13 But again, so that in the dealings
14 between the Crown and the Indian people, to ensure that
15 there would be some measure of fairness, the Royal
16 Proclamation also stated that this surrender of land by
17 Indian people to the Crown could only take place at a
18 public meeting called for the purpose of such a
19 surrender, and at that public meeting there had to be
20 proper representation from the Crown and there also had
21 to be proper representation from the Indian people, the
22 chiefs and headmen of the Indian tribes at the time
23 had to be present at this solemn occasion for the
24 surrender of land.

25 And if I can analogize with a metaphore

1 that I once read in an article written by a Professor
2 Brian Slatery of Osgoode Hall Law School. He refers to
3 British North America at the time of the Royal
4 Proclamation as being like a big cookie. And the
5 thought was that from time to time bites would be taken
6 out of the cookie, and this process which is
7 established under the Royal Proclamation prescribed
8 that each time a bite would be taken out of this big
9 cookie a treaty had to be signed with the appropriate
10 Indian people at a public meeting.

11 So if I can just use that analogy.
12 Ontario, if you can take a little piece off of the
13 cookie, can be seen as bites being taken off of that
14 piece every time that a treaty was signed.

15 MR. MARTEL: Can I ask a question? The
16 taking of the bit of the cookie, from your legal
17 background, was it done in a consultative negotiated
18 fashion or was it simply: I am taking a bite of the
19 cookie?

20 MR. CRYSTAL: Well, I suppose, Mr.
21 Martel, that's a matter of considerable debate today
22 and I suspect that in cross-examination that will be a
23 matter for discussion.

24 But I would like to -- I will be speaking
25 to that issue to some extent, okay? I think that it

1 turns, to some extent, on a literal interpretation of
2 the treaty document and perhaps another interpretation
3 of what really happened and what the understandings of
4 the parties were at that time. And I think that's fair
5 to say that -- I have been involved in many meetings
6 where that has been the subject of considerable
7 discussion.

8 If I can refer you to a map that I have
9 got on the overhead, it is also included in the
10 materials at page 272, I believe.

11 MR. FREIDIN: Q. That's correct.

12 MR. CRYSTAL: A. And this is a map of
13 Ontario which is divided into the treaty areas and each
14 one of these treaty documents that I described, that
15 are prescribed under the Royal Proclamation of 1763,
16 each one of these treaties was for a particular area of
17 land in the Province of Ontario.

18 You can see either on my map or on the
19 map that's on page 272, the two are almost identical.
20 I have doctored up the one on the overhead to some
21 extent so that it would show up better. The small
22 writing that's on the one at page 227, I didn't think
23 it would show up on the overhead.

24 But you can see that the areas on page
25 272 that are denoted as AH and AE, those are the areas

1 that were the subject of Treaty No. 9. The AE portion
2 south of the river was signed in 1905, and the area
3 north of the river, AH was an adhesion to that treaty.
4 There wasn't a new treaty, but many of the Indian
5 people -- or the Indian people north of the river
6 adhered to the earlier treaty in 1929.

7 You can see in the corner, the corner on
8 the left of the map, the area marked AC, that is the
9 area that was the subject of Treaty No. 3 and you will
10 note that the area marked I believe as Y and Z, those
11 areas are known as the Robinson Treaty areas. The Y is
12 the Robinson-Superior Treaty area and the Z is the
13 Robinson-Huron Treaty area.

14 And you will notice that southern
15 Ontario, the southern Ontario area is marked up into
16 rather small tracts and the treaties or surrenders for
17 southern Ontario are much smaller than the areas in
18 northern Ontario.

19 Another difference between the treaty
20 areas in southern Ontario and northern Ontario is that
21 the treaties in northern Ontario in general include
22 this term concerning access to natural resources. The
23 treaties in southern Ontario do not include such a
24 term.

25 Q. Perhaps before you leave that

1 document, Mr. Crystal, the native groups which are
2 represented here, that are parties--

3 A. Yes.

4 Q. --are the Nishnawbe-Aski Nation,
5 Windigo Tribal Council Treaty No. 3 and the Metis
6 and -- Ontario Metis and Aboriginal Association.

7 And could you advise whether there is any
8 relationship between any of them and the treaties that
9 you have described on this map?

10 A. Yes. The area that is described in
11 the overhead is Treaty No. 9 and the area that is
12 described as Treaty No. 5, you will see that is the top
13 area just north of the Treaty 3 area. Those are the
14 areas which are inhabited by the constituents of the
15 Nisnawbe-Aski Nation.

16 And the area that I described as the
17 Treaty No. 3 area, AC on the map on 272, that is the
18 area that was the subject of Treaty 3 and that
19 organization known as Grand Council Treaty No. 3
20 represents the participants in Treaty No. 3 who inhabit
21 that area.

22 Q. And could you indicate what the
23 relationship is, if any, of the Windigo Tribal Council
24 and the Ontario Metis and Aboriginal Association in
25 relation to treaties?

1 A. Well, taking the Ontario Metis and
2 Aboriginal Association, again, it may be inappropriate
3 for me to be the person to describe these organizations
4 and I am sure that when those organizations come
5 forward they will have their own comments to make about
6 their own personal makeup, their own individual makeup.
7 I make these comments as being my understanding and
8 subject to any correction that might be made.

9 I don't believe that the Ontario Metis
10 and Aboriginal Association is an organization which has
11 any direct relationship with any particular treaty.
12 Now, I don't say they don't have any relationship to
13 any treaty at all, of course, but they have no
14 connection to any particular treaty. They have -- I
15 understand that they have members throughout the
16 Province of Ontario.

17 Now, the Windigo Tribal Council, and
18 again I am sure that a representative on their behalf
19 would be better to describe their composition than I
20 would be but, in general, the bands which are members
21 of the Windigo Tribal Council can be found in the
22 Nishnawbe-Aski Nation area, in the area to the
23 northeast of Treaty 3 and Treaty 5.

24 Perhaps if I could just indicate on the
25 overhead. I believe that this area that I am pointing

1 to with my pen is the area where the bands of the
2 Windigo Tribal Council are located.

3 THE CHAIRMAN: Northwest?

4 MR. CRYSTAL: Pardon me?

5 THE CHAIRMAN: Is that northwest or
6 northeast?

7 MR. CRYSTAL: I meant to say northwest of
8 this area. I meant northeast of the Treaty 3 area. So
9 I believe this area is northeast of Treaty 3.

10 And while I believe that the Windigo
11 Tribal Council - I may be wrong about this - but I
12 believe that they are all members of Nishnawbe-Aski
13 Nation as well. I don't believe that the Windigo
14 Tribal Council per se is directly related to a treaty
15 in the way that Grand Council Treaty No. 3 is related
16 to Treaty No. 3 but, again, I remain open to correction
17 by the organizations.

18 MR. FREIDIN: Q. That is fine. Thank
19 you.

20 MR. CRYSTAL: A. Before leaving this
21 map, there is one other point that I ought to raise,
22 and that is that the treaty areas represent -- or at
23 least were an attempt to represent the traditional
24 areas where native people hunted within the -- at least
25 within the terms of the Royal Proclamation, the land

1 was reserved to them for their hunting grounds and, of
2 course, those words 'reserved to them for their hunting
3 grounds' today are given a rather expansive definition.

4 But the traditional hunting areas of the
5 Indian people who inhabited those areas generally
6 followed watersheds, at least that was the rationale
7 behind the treaty areas. And so you can see that the
8 Treaty 9 area is the area which is the watershed of
9 Hudson and James Bay, that the Robinson Treaty areas
10 are areas which are watersheds of the Great Lakes.
11 Treaty No. 3 is I believe an area that flows into
12 Hudson and James Bay through the Nelson River system,
13 and I think Treaty No. 5 is an area which flows into
14 Hudson Bay through the Beren's River system. So you
15 can see that these treaty areas follow watersheds.

16 Now, if I might make a few descriptive
17 comments about the treaty documents themselves.
18 Essentially, the treaties were made in satisfaction of
19 the procedure that was set out in the Royal
20 Proclamation of 1763, and they were agreements entered
21 into between the Crown and the relevant Indian people.
22 And essentially the treaties had four incidents -- four
23 elements. The first, and perhaps in many ways a very
24 controversial element, but clearly it was an element of
25 the literal document - and we will have a look at one

1 of those literal documents in a moment - but there can
2 be no doubt that from at least a reading of the literal
3 document that the main purpose of the document was a
4 surrender of the land that was the traditional hunting
5 ground of the relevant Indian people. And I think that
6 is also in keeping with the language of the Royal
7 Proclamation of 1763.

8 The second incident of the treaty-making
9 process was that the Indian people received goods and
10 money, presumably in return for the surrender. Again,
11 this -- given the literal interpretation of the
12 treaty - and I will do my best to try to describe the
13 different interpretations that might be placed on those
14 words. And that money was usually in the form of a
15 payment, an initial payment that was made at the time
16 of the signing of the document and, further, an annuity
17 and perpetuity. And those annuities, although the
18 treaties are quite ancient, those annuities are still
19 paid out today to those who wish to receive them.

20 Thirdly, the treaties include a term for
21 reserves for the Indian people and given that -- the
22 first element that I have described, that the
23 traditional hunting grounds were to be surrendered by
24 the treating-making process, these reserves were the
25 areas where Indian people were to take up residence.

1 However, it was not the intent that
2 Indian people would be confined to these reserves for
3 their hunting and fishing and trapping and their
4 traditional pursuits because the treaties, at least in
5 northern Ontario - and I think that it is quite
6 striking that this is a term in the northern Ontario
7 treaties but it is not a term in the southern Ontario
8 treaties - and I think that that emphasizes the
9 importance of the term of the treaty and that term was
10 that the Indian people who participated in the
11 treaty-making process were to have the right to hunt
12 and fish and trap over the area which was the subject
13 of the surrender with certain exception.

14 And those exceptions were areas that
15 would, from time to time, be taken up for certain
16 purposes and those purposes included - and they varied
17 from treaty to treaty - but those purposes included the
18 right to fish, the right to hunt, in some cases the
19 right to trap, in some cases there is an explicit right
20 to trap. And I should add that in Treaty 3 there is
21 also an issue as to whether or not the treaty included
22 a right to take wild rice. There is a version of
23 treaty 3 that has been put forward by Grand Council
24 Treaty No. 3 which is not the printed version which the
25 Government of Ontario has in its volumes of treaties,

1 but in that other version of the treaty, there is also
2 included a right to harvest wild rice. We will talk
3 about that in a moment as well.

4 But this right to hunt and fish and trap
5 over the area that was the subject of the surrender was
6 not to apply in areas taken up for - and, again, they
7 vary from treaty to treaty - but for mining, for
8 lumbering, for settlement, for trade, and in some of
9 the treaties it also uses the words 'and for other
10 purposes'.

11 And I am sure that, Mr. Chairman, you are
12 familiar with the legal term uses generous and I think
13 that that is probably an appropriate doctrine to apply
14 to those words 'other purposes'.

15 Q. Perhaps just for the benefit of those
16 who do not understand what that means, you could
17 explain what uses generous means?

18 A. Yes, that means that in a legal
19 document, if there is a series of words like: hammer,
20 screwdriver, handsaw and other tools, that the words
21 'and other tools' are to be interpreted according to
22 the words which preceded them.

23 So, for example, you wouldn't then put in
24 bulldozer, you wouldn't include that as one of the
25 other tools as to be included in the group. You would

1 presumably include only hand tools because that was
2 what was described in the first series of words.

3 Q. And I understand that in relation to
4 the last point about lands not taken up, that the
5 witness statement at page 169 contains an excerpt from
6 Treaty No. 9 as an example and the clause you refer to
7 is in fact identified -- is excerpted from the treaty
8 and is reproduced at the bottom of the page; is that...

9 A. Yes, that is correct. Although I
10 believe Treaty No. 9 is also included in the
11 documentation at the back of the witness statement, I
12 believe it is page 239, and the paragraph that is
13 reproduced on 169 can be found I believe on page 239.

14 Q. I think it is 240, the third full
15 paragraph.

16 A. Yes, page 240. But, at any rate,
17 just to look at that paragraph for a moment, it says:

18 "And his Majesty the King hereby agrees
19 with said Indians, they shall have the
20 right to pursue their usual vocations of
21 hunting, trapping and fishing."

22 So there you have got all three that are
23 included there and this is in the treaty.

24 So, again, when I was talking about
25 treaty rights, treaties may mean one thing to some

1 people and another thing to other people, but there can
2 be very little doubt that treaty -- when one talks
3 about treaty rights, whatever else it might include, it
4 certainly does include rights to hunt, trap and fish,
5 but it says:

6 "Throughout the tracts surrendered as
7 heretofor described..."

8 It says:

9 "...subject to such regulations as may be
10 made from time to time by the government
11 of the country..."

12 And then I think these last two lines are
13 certainly very significant for this Board:

14 "...and saving and excepting such tracts
15 as may be required or taken up from time
16 to time for settlement, mining,
17 lumbering, trading or other purposes."

18 I think that there is some significance
19 that ought be attached to those words. So there is a
20 right to hunt and fish and trap applied over the areas
21 surrendered but not those areas taken up from time to
22 time for those purposes.

23 The next slide that I have prepared I
24 have entitled Treaties as Instruments for the Surrender
25 of Land, and I suppose, Mr. Martel, this is the issue

1 that I think you raised.

2 I have excerpted very briefly on the
3 overhead slide the provision of the treaty that deals
4 with the surrender and I believe that is reproduced in
5 the materials as well and it certainly would also be
6 included in the treaty documents that are set out at
7 the end of the material, but essentially it says that:

8 "Said Indians to hereby cede, release,
9 surrender and yield up to the Crown..."

10 This says Majesty the King:

11 "...all their rights, titles and
12 privileges whatsoever to the lands."

13 And I think that certainly from a literal
14 interpretation, there cannot be very much doubt about
15 what the literal meaning of those words is.

16 However, I think that -- as I mentioned
17 earlier, I have been involved in many discussions with
18 Indian people about this issue and I have also had the
19 privilege to hear elders come to several different
20 meetings, people who were, at least in the case of
21 Treaty No. 9, contemporaries of the treaty-making
22 process and they state, first of all - and I think that
23 this is something that we would all have presumed -
24 that the Indian signatories were not fluent in the
25 language of the written document of the treaty. I

1 think that that is probably apparent to all of us.

2 But I think that perhaps most interesting
3 is that those elders that I have referred to have
4 stated - and I have heard it more than once - that in
5 entering into the treaty-making process it was not
6 their intention to surrender land to the Crown, at
7 least not in the way that we understand the word
8 surrender, that was not their intention at all, rather
9 they thought that they were entering into an agreement
10 with the Crown for sharing the land with newcomers.

11 And I think that is fair to say that, to
12 co-exist with the newcomers. Perhaps Indian people
13 will characterize the treaty-making process in some
14 other way, but at least it is my experience in talking
15 with Indian people and, in particular, Indian people
16 who were around at the time of Treaty No. 9's signing,
17 that seems to be the interpretation that they place on
18 it.

19 I would like now to turn to a matter that
20 perhaps is a little more mundane and that is the
21 constitutional framework for government, within which
22 government deals with native issues, and I generally am
23 referring to the division of responsibility between the
24 federal government and the provincial government.

25 And, as you are probably aware, the

1 Constitution of Canada provides that certain powers are
2 to be exercised by the federal government and certain
3 powers are to be exercised by the provincial
4 governments. And those powers which are to be
5 exercised by the federal government are set out in
6 section -- in part, set out in Section 91 of the
7 Constitution Act, 1867, and those powers which are to
8 be exercised by the provincial governments are set out
9 in Section 92 of the Constitution Act, 1867.

10 And one of the items that are set out in
11 the list of matters for which the federal government is
12 to have exclusive powers in respect of making laws,
13 exclusive legislative powers, is Indians and lands
14 reserved for the Indians - and it is worth noting that
15 those are two separate heads - the federal government
16 has responsibility for making laws in relation to
17 Indians and the federal government also has
18 responsibility for making laws in relation to lands
19 which are reserved for the Indians.

20 And Section 92, of course, sets out
21 certain matters for provincial legislative
22 responsibility and they include matters involving
23 property and civil rights and they include matters of a
24 local and public nature.

25 Well, as you can well imagine, there are

1 areas of overlap and I suppose that is what keeps
2 constitutional lawyers going, is those, to some extent,
3 well now that the new Charter of Rights is with us, I
4 think that is a new area for constitutional lawyers.

5 But traditionally, the subject matter
6 they dealt with was those areas of overlap between
7 responsibility between 91 and 92. And the question
8 arose: Is how do provincial laws, which are clearly
9 within the confidence of the provincial government
10 under Section 92, how are they to apply to Indian
11 people?

12 And I use the example here: Does the
13 Highway Traffic Act of Ontario apply to Indian people?
14 If there is an Indian person driving at a high rate of
15 speed on an Ontario highway, the law which governs
16 traffic on Ontario highways is a provincial law. How
17 do provincial laws apply to Indian people?

18 And this is an important issue in this
19 context because many of the laws concerning access to
20 natural resources are provincial laws and so the
21 question of how provincial laws apply to Indian people
22 is one of considerable import, I would think, to this
23 Board.

24 Courts considered this issue of how
25 provincial laws apply to Indian people throughout the

1 1920s, 30s and 40s and, while there were differing
2 judicial opinions, by 1951 the law was clear enough to
3 be codified in a section of the Indian Act as to how
4 provincial laws were to apply to Indian people, and
5 that section of the Indian Act which concerns this
6 issue is Section 88 of the Indian Act.

7 And Section 88 is a rather lengthy
8 section and it is a difficult section to follow, but it
9 can be easily understood if it is considered to be a
10 general rule which is subject to a few exceptions, and
11 that general rule is that laws of general application
12 in force from time to time in the province apply to
13 Indian people in the province. That is the general
14 rule.

15 So the answer to the question of whether
16 the Indian person driving down the highway at a high
17 rate of speed would be subject to Ontario laws, the
18 answer is yes, because that law is a law of general
19 application and it is in force in the province so it
20 applies to Indians.

21 But there are a few exceptions to that
22 general rule of Section 88, and the important section
23 for our purposes here today is that that rule applies
24 subject to the terms of a treaty. So if there is a
25 provincial law which prohibits a particular activity

1 and there is a treaty right contained in a written
2 treaty - and it must be either written into the treaty
3 or there is actually case law that says that promises
4 made contemporaneous with the treaty-making process are
5 to be treated as if they were incorporated into the
6 written treaty - but those treaty rights, if they
7 should conflict with provincial laws, will prevail over
8 those provincial laws.

9 THE CHAIRMAN: Mr. Crystal, has the
10 jurisprudence changed the Doctrine of Paramountcy in
11 that respect?

12 MR. CRYSTAL: Well, the Doctrine of
13 Paramountcy, as I understand it, is a doctrine which
14 has application when there is a direct conflict between
15 federal laws and provincial laws. And I believe there
16 is a case called McCutcheon versus Multiple-Access
17 which sets out that there is no place for the doctrine
18 of paramountcy unless there is federal law that says
19 'x' and a provincial law that says 'not x', okay?

20 Section 88 is not so much a section which
21 deals with the application of federal laws, although
22 you will see it has implications for that and I will
23 describe that in a moment, but Section 88 is really a
24 provision that deals with what happens when there is a
25 conflict between a provincial law and a treaty right.

1 So, as such, in answer to your question, it really does
2 not affect the Doctrine of Paramountcy.

3 It is important here to note that this
4 description that I am embarking upon now and which I
5 will expand upon in a moment is based on jurisprudence
6 in force prior to 1982. And according to the law that
7 was in existence prior to 1982, one could draw an
8 analogy to a step ladder of the way that treaty rights
9 and laws of -- passed by the federal and provincial
10 governments interacted with one another.

11 Aboriginal rights, which are not found in
12 a written treaty according to a pre-1982 decision of
13 the Supreme Court of the Canada called Manuel and
14 Kruger, were subject to both provincial law and federal
15 law. So if an aboriginal right suggested that a
16 particular activity should be done by Indian people
17 without restriction by any law, and there was a
18 conflict of that aboriginal right with either a
19 provincial law or a conflict with a federal law, both
20 the provincial and federal law would prevail over that
21 aboriginal right which was not part of the written
22 treaty or incorporated in a written treaty according to
23 that doctrine I described a few moment ago.

24 MR. FREIDIN: Q. And just to perhaps
25 repeat to make sure it is clear, this hierarchy of laws

1 that you are now describing is the situation prior to
2 1982 when the Charter of Rights was enacted?

3 MR. CRYSTAL: A. Prior to that date,
4 yes. But it think it is important to understand what
5 existed prior to 1982 in order to understand better
6 what exists at the present time.

7 However, as you probably note from my
8 discussion on Section 88, if there is a conflict
9 between a treaty right and a provincial law, that
10 treaty right will prevail over the provincial law. So
11 the treaty says you can hunt or fish and there is a
12 provincial law which prohibits or restricts hunting or
13 fishing; that is to say, even if the provincial law
14 says on one day of the year you are prohibited from
15 hunting, well that -- even that restriction would not
16 prevail over a treaty right. Treaty rights are without
17 restriction by provincial laws.

18 But the cases which considered the
19 application of Section 88 came to the conclusion that
20 Section 88 was only a provision dealing with conflicts
21 between provincial and treaty rights, but that it did
22 not speak to the issue of what would happen if there
23 was a federal law which conflicted with a treaty right.

24 And, in those cases, which are noted -
25 the full cases aren't there but the titles of the cases

1 are - those cases which include the cases of Regina
2 versus George, and Regina versus Sikyea - that is
3 S-i-k-y-e-a - they state that federal -- when there is
4 a conflict between treaty rights and federal laws, that
5 the federal law prevails over the treaty right.

6 So it is a different sort of dynamic than
7 the dynamic between treaty rights and provincial laws.
8 When there is that treaty saying: Proceed with the
9 activity, and the federal law saying: No, here are
10 certain restrictions on that activity, like you need a
11 licence or you can only do it at a certain time of the
12 year or you can't do it in certain areas, those federal
13 laws prevail over the treaty rights, at least prior to
14 1982.

15 And it is worth noting that the Migratory
16 Birds Convention Act and the Ontario Fisheries Act and
17 the regulations made under those Acts are all
18 federally-enacted laws. And so at least according to
19 the jurisprudence prior to 1982, those laws would
20 prevail over treaty rights. It may be a little
21 difficult to read, I apologize.

22 To come back to Section 35(1) which again
23 states:

24 "The existing aboriginal treaty rights of
25 the aboriginal people of Canada are

1 hereby recognized and affirmed."

2 And there are two very important words in
3 that provision that I would like to highlight for you.
4 The first important word is the word 'hereby' because
5 those existing aboriginal and treaty rights are hereby
6 recognized and affirmed, they are recognized and
7 affirmed in the Constitution, so there can be no doubt
8 that those rights are constitutional rights as of April
9 17th, 1982.

10 And that is important because if you look
11 at the next provision that I have written down there,
12 Section 52 of the Constitution - and these provisions
13 are included at the back of the materials as well -
14 Section 52 of the Constitution states that:

15 "The Constitution of Canada is the
16 supreme law of Canada and any law which
17 is inconsistent with the provisions of
18 the Constitution is, to the extent of the
19 inconsistency, of no force or effect."

20 So Section 52 is a section which deals
21 with conflicts of law in the same way as the conflicts
22 I was describing earlier between treaty rights and
23 federal laws.

24 Well, -- but this conflict that is
25 described in Section 52 is a conflict between the

1 Constitution of Canada and any other law of Canada,
2 whether it be a federal or a provincial law. And what
3 it says is that to the extent that any law of Canada,
4 be it provincial or federal, is inconsistent with the
5 Constitution of Canada, then that law is of no force in
6 effect or effect to the extent of the inconsistency.

7 I will come back to the slide in a
8 moment. You can see an interesting dynamic forming
9 here. This was the pre-1982 hierarchy of laws and
10 rights. When you place Section 35(1) into the matrix,
11 if treaty rights and aboriginal rights are now
12 constitutional rights, as Section 35 may suggest, then
13 those are elevated to constitutional law,
14 constitutional rights and they now are the top rung of
15 a ladder. And depending upon the interpretation of
16 Section 35(1), treaty and aboriginal rights may prevail
17 over both federal laws and provincial laws since the
18 enactment of the amendments to the Constitution in
19 1982.

20 The one other provision that I have set
21 out on this slide is Section 25 of the Charter,
22 actually. Section 35 and Section 52 are not part of
23 the that 1982 constitutional amendment package known as
24 the Charter of Rights and Freedoms. Section 25 is a
25 section which is contained in that Charter of Rights

1 and Freedoms, and it says:

2 "That the guarantee in this Charter of
3 certain rights and freedoms shall not be
4 construed so as to abrogate or derogate
5 from any aboriginal, treaty or other
6 rights pertaining to the aboriginal
7 people of Canada."

8 And that includes rights obtained through
9 the Royal Proclamation and rights obtained through land
10 claims settlements. And that section essentially is
11 there in response to an argument that might be put
12 forward on Section 15 of the Charter. Section 15 is
13 the section of the charter that says everyone is
14 entitled to equal benefit of the law and without
15 discrimination.

16 And I suppose, given the existence of
17 treaty and aboriginal rights, someone might argue that
18 such rights are unconstitutional because Section 15
19 ensures equality rights for all Canadians. But Section
20 25 of the Charter is there to say: Well, that's not
21 the case, there is an exception to Section 15. The
22 guarantee in this Charter of certain rights; that is,
23 equality rights, will not be construed so as to take
24 away aboriginal and treaty rights.

25 I would like to focus now on the meaning

1 of the word 'existing' within Section 35(1) because
2 this is, I think in many ways, crucial to an
3 interpretation of that section. There are several
4 different meanings that might be attributed to that
5 word. And Professor Peter Hogg of Osgoode Hall Law
6 school that wrote the Canada Act 1982 annotated has a
7 discussion of Section 35(1) of the Constitution.

8 And in that section -- in that discussion
9 he sets out that there might be three possible
10 interpretation for the word existing. The first
11 possible interpretation would say that those rights are
12 those rights which exist without reference to any past
13 regulatory legislation. In other words, there have
14 been, from time to time, certain restrictions placed on
15 treaty rights through the enactment of federal
16 legislation as interpreted by the Supreme Court of
17 Canada. This interpretation would, with a stroke, do
18 away with those restrictions and the treaty and
19 aboriginal rights would, once again, blossom to their
20 full power. That would be one interpretation.

21 A second interpretation would say this:
22 Those rights are described in the Constitution as
23 existing. Well, what point in time does the word
24 existing refer to. Well, the Constitution was enacted
25 on April 17th, 1982, so what Section 35(1) must be

1 talking about, according to this second interpretation,
2 is that the rights exist in the same manner as they did
3 on that date. That's what existing means according to
4 the second interpretation.

5 Well, on that date, according to the
6 Supreme Court of Canada, treaty rights were subject to
7 federal regulation and aboriginal rights were subject
8 to both provincial and federal regulation. So the
9 rights which are constitutionalized are
10 constitutionalized but, nevertheless, they are
11 constitutionalized in their existing form and,
12 therefore, remain subject to legislation, both federal
13 and provincial, in the same manner as they had up to
14 that point in time. That's the second interpretation.

15 The third interpretation which actually
16 Peter Hogg suggests is the most appropriate
17 interpretation suggests that rights that are described
18 in Section 35(1) are such interpreted to be subject to
19 legislation which existed on that date, but not subject
20 to any new legislation which comes into force after
21 that date.

22 So essentially, what that interpretation
23 would have is a freezing of the state of treaty and
24 aboriginal rights, at least -- I shouldn't say that
25 because they can certainly be enhanced through some

1 sort of agreement - but that interpretation would
2 prevent erosion or restriction of treaty and aboriginal
3 rights beyond that which had occurred as of April 17th,
4 1982.

5 Now, I suppose one question you might ask
6 is: Well, which of these interpretations have the
7 courts adopted? And to date the Supreme Court of
8 Canada has not ruled on Section 35(1) of the
9 Constitution - I think that's a very important point to
10 make - but two Provincial Courts of Appeal have ruled
11 on the issue and they have ruled on the issue in
12 relation to fishing, fishing rights.

13 And one of the -- the British Columbia
14 case called Regina versus Sparrow concerns the
15 aboriginal right to fish and the Ontario Court of
16 Appeal case, which was not decided at the time when
17 this material was prepared - it was decided on August
18 3rd of this year, just a few weeks ago - it also
19 decided -- arrived at some interpretation of Section
20 35(1) of the Constitution.

21 And both of those Courts of Appeal took a
22 common approach to the issue and actually, while they
23 addressed these three possible interpretations, they
24 didn't choose one, but rather they took a different
25 approach to the issue and they said this:

1 "Treaty and aboriginal rights shall
2 remain subject to federal regulation but
3 only if that federal regulation has, as
4 its rationale, conservation of the
5 resource."

6 So if there was a federal law which had
7 as its rationale the allocation of certain economic
8 benefits; for example, there is one group of citizens
9 over in one place and another group of citizens over in
10 another place and the federal government decided that:
11 Well, this group of citizens ought to obtain economic
12 benefits from the fishery at the expense of another
13 group, say an Indian group, that sort of law would not
14 have conservation as its rationale.

15 The same number of fish presumably would
16 be taken out of the water in one case as in the other.
17 So that sort of law doesn't have anything to do with
18 conservation, what it has to do with is distribution of
19 economic benefits. Such a law would not prevail over
20 treaty and aboriginal rights. The only federal laws,
21 at least according these recent decisions, which
22 prevail over treaty and aboriginal rights are laws
23 enacted by the federal government which have a
24 rationale of conservation of the resource.

25 Now, that is the end of the first part of

1 my presentation. I am going to move into the second
2 part.

3 THE CHAIRMAN: We are going to move into
4 lunch time.

5 MR. CRYSTAL: Okay.

6 THE CHAIRMAN: We will break until 2:00
7 p.m. Thank you.

8 ---Luncheon recess taken at 12:30 p.m.

9 ---Upon resuming at 2:05 p.m.

10 THE CHAIRMAN: Thank you, ladies and
11 gentlemen.. Please be seated.

12 Mr. Freidin?

13 MR. FREIDIN: Q. Mr. Crystal, perhaps
14 you could pick up, and I understand that you have
15 gotten to the end of the first part of your
16 presentation and now you are going to deal with
17 Ontario's policy on native affairs as it relates to
18 lands and natural resources?

19 MR. CRYSTAL: A. Yes, that's correct.

20 Mr. Chairman, I take careful note of your
21 earlier comments, and I think this second half perhaps
22 requires less explanation than the first half of my
23 evidence and I will try to run through it as quickly as
24 I can.

25 THE CHAIRMAN: Thank you.

1 MR. CRYSTAL: Mr. Chairman, I would like
2 to describe or highlight some of the Ontario native
3 affairs policy relating to lands and natural resources
4 under four headings: Traditional and subsistence
5 harvesting practices, land base, social and economic
6 development and self-government.

7 The first policy and perhaps one of the
8 best well-known policies of the Government of Ontario
9 is the so-called Leniency Policy or Leniency
10 Guidelines. This formed part of a document, guidelines
11 in the way in which wildlife regulation was to be
12 enforced in respect of native people and it was
13 circulated, I believe, in 1979 and it was circulated to
14 every chief of every Indian band in Ontario.

15 And perhaps the most pertinent policy
16 matter raised in that document was the Leniency Policy.
17 And what that document said was that Ontario
18 conservation officers should exercise leniency when
19 dealing with treaty Indians, and that would include
20 only status Indians, it has been interpreted to mean
21 status treaty Indians. Treaty Indians who appear to
22 have violated the Fisheries Act or the Migratory Birds
23 Convention Act and the regulations made under these
24 statutes by taking fish or migratory birds on
25 unoccupied Crown land for their personal consumption or

1 possessing or transporting these fish or birds.

2 Now, I make the note underneath that
3 policy that when it comes to provincial legislation,
4 you will note that this policy highlights the Fisheries
5 Act and Migratory Birds Convention Act which are both
6 federal legislation.

7 When it comes to provincial legislation,
8 where there is a treaty right, it is not the Leniency
9 Policy that gives the effect of the treaty right
10 prevailing over the provincial legislation. As I
11 described to you, as a result of Section 88 of the
12 Indian Act, where there is a treaty right in conflict
13 with the provincial law, the provincial law simply does
14 not apply in much the same way as the laws of South
15 Dakota do not apply in this jurisdiction. So it is not
16 a case of leniency.

17 Leniency is applied where federal
18 legislation would prevail ordinarily were it not for
19 this policy. And I think that is probably worth
20 emphasizing at this particular point in time, that the
21 comments that I am going to be making for the rest of
22 this presentation are matters of policy rather than
23 law. These are policies which the Government of
24 Ontario have adopted, presumably as a matter of good
25 resource management and/or good government in general,

1 and these policies are not necessarily dictated by the
2 requirements of law.

3 THE CHAIRMAN: I take it that it is the
4 Ontario officers that have the responsibility for
5 enforcing the federal legislation?

6 MR. CRYSTAL: In respect of the fisheries
7 matters, every conservation officer in Ontario is also
8 appointed as a fisheries officer and almost all of the
9 regulation is done by those Ontario officers.

10 In the case of the Migratory Birds
11 Convention Act, there is enforcement that's done by
12 federal officers as well and quite often those officers
13 are RCMP officers.

14 Now, I should point out about this policy
15 perhaps a little bit of the background and a little bit
16 of the rationale. I think it was developed as a
17 response to the fact that federal laws, at least prior
18 to 1982, prevailed over treaty and aboriginal rights
19 and that it seemed that as a matter of good policy it
20 was appropriate for Indian people to be able to
21 continue with harvest of fish and game birds for their
22 own personal consumption on Crown land.

23 Now, this policy does not mean that
24 Indian people are never prosecuted in respect of that
25 legislation, from time to time they are, particularly

1 where commercialization is involved. That, of course,
2 would not be a case of personal consumption.

3 I think it should also be noted that even
4 ten years ago the Government of Ontario fully
5 understood that these matters were probably matters
6 which required a negotiated solution but,
7 unfortunately, we have been at the negotiations for
8 some time now and actually had more than one attempt at
9 concluding negotiations. I hope that they will be
10 concluded in some areas of the province in the not too
11 distant future, but even at the present time, we have
12 not been able to conclude negotiations and, to some
13 extent, this Leniency Policy was intended as an interim
14 measure until there could be some agreement on the
15 issue.

16 I should also point out that the
17 Government of Ontario, as you will see from some of the
18 other points that are raised about policy, clearly
19 recognizes some special interest in respect of Indian
20 people in the province, although it is very difficult
21 from time to time to define precisely what that special
22 interest is. I think that probably some of the
23 discussion that you will hear in the next few days will
24 be discussion about the definition of that interest.

25 While it has been difficult to clearly

1 define that interest, this Leniency Policy has been
2 Government of Ontario's way of addressing that special
3 interest without necessarily defining the issues of
4 treaty and aboriginal rights.

5 I should also point out that this
6 Leniency Policy has among those non-native people or
7 perhaps native people, I don't know, but mostly
8 non-native people who are in favour of strict
9 enforcement, this policy is not a popular one with
10 them. I should also point out that among Indian
11 people, they would take the position that they don't
12 want leniency, they want a voice to their rights.

13 So, from their point of view, this
14 Leniency Policy is not satisfactory either, and while
15 this Leniency Policy -- I should also point out that
16 with conservation officers it is not a popular policy
17 either because conservation officers are often put in a
18 position where they are not entirely clear on what
19 measures they should be following.

20 But while this policy has not been
21 popular on many fronts, it is seen as an interim way of
22 addressing that special interest of native people.

23 THE CHAIRMAN: Mr. Crystal, where does
24 the leniency apply, after a charge has been laid and in
25 prosecution or in the laying of the charge in the first

1 place?

2 MR. CRYSTAL: Well, it could apply -- I
3 suppose once a charge has -- once process has issued,
4 then I suppose it is beyond the Leniency Policy at that
5 point, although I suppose the spirit of the Leniency
6 Policy might be a matter to take into consideration
7 beyond that point. But I think that this policy is
8 intended to -- in respect of the situation before a
9 large charge has been laid.

10 MR. MARTEL: But we continue to have
11 incidents where you think you would have, particularly
12 around Moosonee I think, where you think you have
13 Leniency Policy and all of a sudden someone is charged.

14 MR. CRYSTAL: Well, Mr. Martel, you are
15 referring I think to a particular incident that
16 happened in October of last year and, to some extent,
17 that incident occurred I think because of less than
18 perfect communication between the Ministry of Natural
19 Resources and the Royal Canadian Mounted Police.

20 And I think that subsequently we have had
21 discussions on that matter and I think, to some extent,
22 the matter has at least been resolved for the time
23 being. I think there was a change in command in the
24 RCMP and that was one of the problems.

25 It is another policy of Government of

1 Ontario that Government of Ontario does not acknowledge
2 the right to compensation for loss of access due to
3 mining or logging activities and I think that this
4 policy stems from that save and except clause that we
5 referred to in the treaties earlier.

6 On wild rice, in 1980 a policy was
7 developed on wild rice and the objective of that policy
8 was to recognize the traditional significance and
9 potential economic benefits to native people of the
10 wild rice resource and to stimulate the use and
11 management of wild rice in general.

12 Now, in 1978 a moratorium, I think
13 flowing from the Royal Commission on Northern
14 Environment, a moratorium was placed on the issuance of
15 licences for harvest of wild rice in northern
16 Ontario -- northwestern Ontario, I am sorry, to
17 non-native people. That moratorium was supposed to
18 last for five years.

19 So during that five-year period of time,
20 non-native people who sought licences for the harvest
21 of wild rice in the area that's covered by the MNR
22 administrative areas of northwestern and northcentral
23 regions, non-native people who wished licences for the
24 harvest of wild rice would not be issued them, only
25 native people were issued such licences. To date --

1 although the five years has run, to date that
2 moratorium exists and continues.

3 I can tell you, however, that the policy
4 development on wild rice is continuing and we
5 contemplate -- I have personally been responsible for
6 conducting negotiations with Grand Council Treaty No. 3
7 on the wild rice issue and discussions broke off, I
8 guess during the spring of this year, and we haven't
9 met since that time, but it is my hope that discussions
10 will once again resume on this issue. And one of the
11 matters to be discussed in those negotiations would be
12 the recognition of a treaty right to the harvest of
13 wild rice for Treaty 3.

14 I would like to take a few moments now to
15 discuss a Memorandum of Understanding which was entered
16 into by Ontario, Nishnawbe-Aski Nation and Canada in
17 1986 and I would like to direct you to the evidence
18 package, and I believe it is page 210, I might be
19 wrong.

20 MR. FREIDIN: Q. Page 290.

21 MR. CRYSTAL: A. 290?

22 Q. Yes, if you are looking for the
23 Memorandum of Understanding.

24 A. Yes, thank you. And in that
25 Memorandum of Understanding, which again if you look at

1 the second page you will see that it was signed by
2 David Crombie who was then the Minister of Indian
3 Affairs and Northern Development, and Mr. Scott, our
4 Attorney General, Minister responsible for Native
5 Affairs and Dennis Cromarty who was at that time the
6 Grand Chief of NAN.

7 And if you look at the first page of that
8 Memorandum of Understanding on page 290, you will see
9 that there were 11 matters which the respective
10 governments and Nishnawbe-Aski Nation agreed to
11 commence negotiations upon, and those included -- well,
12 you can read them for yourself but they included
13 fishing, trapping and hunting and band status and land
14 for reserves. And you will see in subparagraph 1(b)
15 there are a number of social issues which were -- there
16 was agreement to negotiate.

17 And, finally, subparagraph 1(c), it
18 states that there is a commitment on the part of the
19 three parties to commence negotiations on economic
20 development, zones of Nishnawbe-Aski Nation band
21 activity and powers and institutions of
22 self-government.

23 Now, I think at this point in time it
24 might also be appropriate to explain to you a little
25 bit about the forum in which these negotiations took

1 place and that forum is a forum called The Indian
2 Commission of Ontario. The Indian Commission of
3 Ontario is a commission established by Canada and
4 Ontario Orders-in-Council and it is a forum for the
5 discussion of issues of concern to status Indian people
6 in Ontario. Those concerns they would have with the
7 Government of Canada and the Government of Ontario.

8 Prior to the establishment of that forum,
9 it was very difficult for Indian people to discuss
10 their concerns with government because when they would
11 discuss a concern with the federal government, quite
12 often they would be faced with the answer at the end of
13 the day: Well, that is a matter of provincial
14 jurisdiction and you will have to take that up with the
15 provincial government. And, of course, when they came
16 back to the provincial government, you can imagine that
17 the response quite often was: Well, that's a matter of
18 federal jurisdiction and you will have to take that up
19 with the federal government.

20 So it was apparent there was a need for a
21 forum for the resolution of these concerns and that's
22 why the Indian Commission of Ontario was established.

23 At that commission there are on-going
24 negotiations, the matters that are set out in this
25 document, there are discussions with Grand Council

1 Treaty No. 3, there are a number of different land
2 claims which are negotiated in that forum - not all
3 land claims that Ontario participates in are with the
4 Indian Commission of Ontario, but many of them are -
5 and there probably are a few other issues that are the
6 subject of negotiations at the Indian Commission of
7 Ontario that I haven't mentioned.

8 I think that I should tell you that after
9 about a year and a half after that Memorandum of
10 Understanding was signed with Nishnawbe-Aski Nation,
11 the Indian Commission of Ontario invited us all to
12 their offices to discuss with them the progress that we
13 had made on this Memorandum of Understanding, and I
14 think that it is unfortunate for everyone that not very
15 much progress had been made on any of the negotiations
16 that had been set out in that Memorandum of
17 Understanding.

18 And it was proposed by Nishnawbe-Aski
19 Nation at that time that perhaps another approach to
20 these negotiations would be more appropriate and
21 Nishnawbe-Aski Nation developed something that they
22 have called their Comprehensive Land Regime Proposal
23 and the concept is that the original Memorandum of
24 Understanding contemplated a set of negotiations to be
25 carried on separately, and the thought was that perhaps

1 these different negotiations might have impact on one
2 another and that it might be difficult to carry them on
3 in that separate manner, and so a proposal was
4 developed to try to deal with these issues in a
5 comprehensive manner and that, I believe, is what the
6 Comprehensive Land Regime Proposal is all about.

7 At the Indian Commission of Ontario, I,
8 on behalf of the Government of Ontario and
9 representatives from the Ontario Native Affairs
10 Directorate also on behalf of Ontario and from the
11 federal government and from NAN have carried on since
12 the beginning of this year something called exploratory
13 discussions on the issues that are of concern to the
14 parties, and those exploratory discussions were
15 preliminary discussions to negotiations.

16 The thought was that there was a need for
17 an exchange of information and an exchange of very
18 preliminary understanding on the issues, and so the
19 Government of Ontario and the Government of Canada and
20 various other agencies, such as Ontario Hydro, made
21 presentations to the group on what the status quo is
22 essentially.

23 The Ministry of Natural Resources made a
24 presentation on what commitments there are out there at
25 the present time on trapping and where the mines were,

1 and Ontario Hydro explained where their hydro
2 developments were, and NAN explained to us one day how
3 they have trapped and what their traditional trapping
4 system means.

5 And we have had this preliminary exchange
6 of information. Those exploratory discussions are now
7 concluded and I would expect that substantive
8 negotiations will probably begin in the not too distant
9 future, probably before the end of this calendar year.

10 Initially, the two topics for general
11 discussion in these negotiations are land use planning
12 and environmental protection.

13 MR. MARTEL: Will that encompass in land
14 use planning, the outstanding land use claims or will
15 that be in a different forum?

16 MR. CRYSTAL: No, it would not include --
17 if by land use claims, you mean the land claims, no.
18 Lands claims within the NAN area are being negotiated
19 separately.

20 Those involve usually different sorts of
21 considerations than the kinds of issues that are being
22 discussed here. Usually there is a particular
23 situation or a particular set of incidents that gave
24 rise to a land claim and these discussions are on a
25 more general level than that.

1 It is the position of the Government of
2 Ontario that the natural resources of Ontario belong to
3 all the people of Ontario, that the Ministry of Natural
4 Resources recognizes obligations arising from treaties
5 and gives primary consideration to subsistence use by
6 native people. And I think that our Leniency
7 Guidelines that I discussed earlier are an example of
8 the way that the Ministry of Natural Resources
9 recognizes those obligations.

10 Finally, it is also the position of
11 Ontario that any negotiations for the transfer of
12 access to natural resources shall be subject to
13 existing third party commitments.

14 Moving on to the area of land base. The
15 point that I read out - and I won't read it again - is
16 also, of course, applicable to the issue of land base.
17 Ontario will and has participated in efforts to settle
18 land claims where it has been established in
19 consultation with Canada that Ontario has some
20 responsibility for the claim.

21 I should add that Ontario reviews the
22 issue of that validity in terms of legal obligations
23 and in terms of fairness. Sometimes, I suppose, there
24 may be situations where legal obligations may have been
25 met but, as a matter of fairness, there has been some

1 measure of injustice. Land claims take those latter
2 types of -- Ontario, in reviewing a land claim, takes
3 those latter sorts of issues into consideration as
4 well.

5 In respect of land for Nishnawbe-Aski
6 Nation communities, it is Government of Ontario policy
7 to meet community and economic needs on a fair market
8 value basis or an acre for acre land exchange. Land
9 will be provided by the Government of Ontario for these
10 community and economic needs by providing land to the
11 Government of Canada to be set apart as Indian reserve
12 land on a fair market value basis or on the basis of
13 exchanging existing reserve land for new reserve land.

14 Now, as a guideline, four square miles
15 per community is used. I should point out, however,
16 that about 18 months ago the federal government - no,
17 more than that - two years ago the federal government
18 announced a policy on the establishment of new Indian
19 reserves and that federal policy is that the federal
20 government will only participate in negotiations for
21 new Indian reserves where it has a legal obligation to
22 do that; that is to say, essentially where there is a
23 land claim or where there has been a natural disaster,
24 for example, the situation in Winisk a few years ago
25 where the community was destroyed by flooding and ice.

1 The federal government will participate
2 in the establishment of new Indian reserves in those
3 situations, but beyond that they will not and that is
4 their policy as stated to date.

5 Ontario is prepared, as I noted in my
6 first point on this slide, to provide land in the NAN
7 communities to meet community and economic needs. But
8 the federal government is the only level of government,
9 going back to Section 91(24), that is the government
10 that has the power to make laws in relation to land
11 reserved for the Indians.

12 Given that the federal government is the
13 level of government that has that responsibility, it is
14 very difficult for Ontario to provide that land and the
15 federal government is not prepared to involve itself in
16 the negotiations. At the present time, discussions are
17 ongoing to try to come up with a way to provide that
18 land so that the various legislative imperatives are
19 met and the community needs are also met, but it is a
20 very difficult problem for the Government of Ontario at
21 the present time.

22 THE CHAIRMAN: Do you know the rationale
23 behind the federal policy?

24 MR. CRYSTAL: I think that it has
25 something to do with money.

1 It is a policy of the Government of
2 Ontario that we will effectively consult where
3 development on land is adjacent to Indian reserve and
4 may have impact on the native or Indian community.

5 Again, I have noted here, just as I noted
6 in the last section, the transfers of land or increased
7 access to natural resources will be subject to existing
8 third party commitments. And, finally, I have noted
9 that park planning documents which may set out certain
10 requirements for land may be superseded by the terms of
11 a land claim settlement.

12 On the issue of economic development,
13 Ontario endorses a pro-active and developmental
14 approach to native affairs, it is seeking to make
15 native people in Ontario more self reliant and less
16 dependent on government services. And, again, that
17 pro-active and developmental approach, the commitment
18 to that approach I think is exemplified by Ontario's
19 participation in the 1986 Memorandum of Understanding
20 and, if you recall, there was a commitment there to
21 enter into negotiations on economic development and I
22 suppose that is subsumed in our more recent
23 negotiations with Nishnawbe-Aski Nation.

24 And my last slide, Mr. Chairman,
25 Ontario's Policy on Self-Government. Ontario is

1 committed to supporting self-government for aboriginal
2 people in Ontario and to entering into negotiations
3 with the federal government and aboriginal people
4 concerning self-government.

5 And, again, this is exemplified in a
6 document which is in the material known as the
7 Declaration of Political Intent which was signed in
8 December of 1985 and Ontario declared its commitment.
9 That document is signed by Ontario and the federal
10 government and many of the different Indian
11 organizations in Ontario, Six Nations, NAN, Grand
12 Council Treaty No. 3, Union of Ontario Indians, and I
13 think there may be a few other organizations as well.

14 MR. FREIDIN: Just for the record, Mr.
15 Chairman, you will find that document at page 292, the
16 signatures of the parties to that agreement at page
17 293.

18 MR. CRYSTAL: Subject to any questions
19 from my counsel, that is all the evidence that I have
20 to present.

21 MR. FREIDIN: I have no more questions
22 for you. Thank very much, Mr. Crystal.

23 MR. CRYSTAL: Thank you.

24 MR. FREIDIN: Just before I do complete,
25 Mr. Chairman, I have one matter that I would like to

1 raise with Mr. Kenrick.

2 Q. And, Mr. Kenrick, I understand that
3 you want to clarify what might not have been clear in
4 your evidence and that is some evidence that you gave
5 about trap lines. Could you just address your comments
6 to the clarification you would like to make?

7 MR. KENRICK: A. Trap lines, I guess the
8 confusion may arise over the word line. It is not
9 linear. In practice, trappers have a tendency to
10 follow a route, a path that leads them back to where
11 they started at the beginning of the day, but it is an
12 area. It is not linear. Trap block -- trapping block
13 may be a more descriptive way of describing it instead
14 of trap line.

15 Q. So within that block you can set a
16 trap line anywhere you want within that block?

17 A. That's correct.

18 MR. FREIDIN: Mr. Chairman, I should have
19 perhaps handed this out before we did the last part of
20 the presentation, but I do have copies of the slides
21 that Mr. Crystal referred to. I will hand those out,
22 perhaps they should be given an exhibit number.

23 THE CHAIRMAN: Very well. Exhibit 214.

24 MR. CASSIDY: Mr. Chairman, I believe
25 that map, Exhibit 214, is there.

1 THE CHAIRMAN: Oh, you are right.

2 MR. CASSIDY: I think it should be 215.

3 THE CHAIRMAN: That's correct. Thank you
4 very much.

5 ---EXHIBIT NO. 215: Hard copies of overhead slides
presented by Mr. Crystal.

6 MR. FREIDIN: Mr. Chairman, I also have
7 the page which is entitled Rare Species in the Area of
8 the Undertaking which we indicated we would add to the
9 exhibit. I am not sure what the number was.

10 THE CHAIRMAN: Of the witness statement?

11 MR. FREIDIN: No, this was an exhibit
12 which was -- it was an interrogatory from the Ministry
13 of the Environment, Interrogatory 6, 7, 8 and 9.

14 THE CHAIRMAN: I think it is Exhibit 210.

15 MR. FREIDIN: 211, I understand. So
16 perhaps this could just be added to Exhibit 211.
17 (handed)

18 THE CHAIRMAN: Keeping it the same
19 number?

20 MR. FREIDIN: Yes.

21 THE CHAIRMAN: Very well.

22 MR. FREIDIN: I will try to have tomorrow
23 the list of the photographs that were actually shown
24 during the presentation.

25 Those are my questions for this panel,

1 Mr. Chairman.

2 THE CHAIRMAN: Thank you, Mr. Freidin.

3 Ladies and gentlemen, just before we
4 start in with the cross-examinations leading off with
5 you, Mr. Cassidy, Mr. Castrilli informed us earlier
6 that there was one clarification that he wished to
7 bring to the attention of the Board with respect to the
8 submissions that he made yesterday on the motion before
9 the Board; and, secondly, the Board has one question
10 for you, Mr. Freidin, and you may have to get
11 instructions from Ms. Murphy, again with respect to the
12 submissions made yesterday.

13 So, rather than interrupt the
14 cross-examinations, perhaps we could just deal with
15 that very quickly now, Mr. Castrilli.

16 MR. CASTRILLI: Thank you, Mr. Chairman.
17 The clarification that I would like to place on the
18 record is not respecting to my submissions of last
19 week, but with respect to the submissions of Mr. Cosman
20 in reply when he was referring to the Dubin Commission.

21 And my understanding of his testimony --
22 excuse me, of his submissions was that advanced notice
23 was given of allegations by all parties in that
24 enquiry. That was certainly the impression I was left
25 with at the time he made his submissions yesterday.

1 I am advised that that was in fact not
2 the case, that the only advance notice that was given
3 with respect to specific allegations in that enquiry
4 was by the Commission itself and not by any other
5 parties.

6 THE CHAIRMAN: I do not think I am
7 following you. The Commission itself had their own
8 counsel. Would they be putting forward allegations,
9 the Commission itself, as opposed to the parties?

10 MR. CASTRILLI: Yes, Mr. Chairman. The
11 reason for that is because the impetus for the
12 establishment of the Royal Commission on Aviation
13 Safety was in fact, for example, the Cranbrook air
14 crash of the late 1970s, mid-1970s and, as a result, of
15 that and other matters, it was the concern of the
16 Commission to deal with, not only the general issue of
17 air safety, but specific problems that may have arisen
18 from time to time. And so that the Commission was duly
19 bound to in fact provide advance notice.

20 But I am advised by Ms. Swenarchuk who
21 was a counsel in that enquiry that no one else,
22 including her clients, provided advance notice of the
23 kind Mr. Cosman was suggesting yesterday.

24 THE CHAIRMAN: And is it your
25 understanding that allegations were made nevertheless

1 by other parties?

2 MR. CASTRILLI: Yes, that's correct.

3 THE CHAIRMAN: In the absence of advance
4 notice?

5 MR. CASTRILLI: Yes, that's correct.

6 THE CHAIRMAN: Thank you, Mr. Castrilli.

7 MR. CASTRILLI: You are welcome.

8 THE CHAIRMAN: Do you wish to respond to
9 that, Mr. Cassidy?

10 MR. CASSIDY: I might be able to assist
11 in this regard. We had discussions with the associate
12 counsel of that Commission who was quite surprised to
13 get a phone call to be asked about something that
14 occurred six years ago.

15 But, in any event, he indicated - and I
16 think Mr. Cosman's comments were in the context of
17 allegations by the Commission being made and he
18 indicated that, in fact, those allegations were
19 outlined at the beginning of every time a location was
20 visited where there was an accident, much as we are
21 going to go on site, or satellite locations.

22 The commission counsel in this case, Mr.
23 Sopinka, as he then was, in any event, he stood up and
24 made public the allegations and also provided written
25 versions of his comments in advance of the testimony.

1 There was nothing secret in that respect.

2 In terms of the reply comments, Mr.
3 Cosman's comments were directed at the Commission
4 allegations which were to the effect that the
5 Commission allowed full rights of reply to all those
6 allegations and, in fact, the parties were free to call
7 whatever evidence they wanted to call after. In that
8 case, the responding parties, such as the airlines,
9 would have had the benefit of hearing the case ahead of
10 them, unlike the present case.

11 THE CHAIRMAN: Well, I guess the question
12 of interest for the Board is: Do either of you
13 gentlemen know whether the intervenor parties were
14 allowed -- not having provided notice, were the
15 airlines allowed a limited right of reply?

16 MR. CASSIDY: I am not in a position to
17 answer that, Mr. Chairman.

18 MR. CASTRILLI: Sorry. My understanding,
19 Mr. Chairman, from Ms. Swenarchuk, who was in fact
20 acting for a union of pilots in that enquiry, was that
21 there were allegations made by a number of the
22 intervenors in addition to the Commission itself, that
23 any allegations made by those intervenors would have
24 been the subject of reply -- limited right of reply
25 subsequent to their having filed their briefs of their

1 evidence.

2 They did not give advance notice of what
3 they intended to raise.

4 THE CHAIRMAN: Okay. And while we are
5 dealing with this right of reply issue, without
6 entering into a full argument, I wonder if counsel has
7 considered the position of the general public in terms
8 of the Board visiting a number of locations around
9 Ontario, the public not being represented by counsel
10 appearing before the Board, standing up and making a
11 specific allegation, obviously not having given advance
12 notice.

13 MR. CAMPBELL: We certainly gave some
14 consideration to that matter, Mr. Chairman, in the
15 course of the discussions that led to my instructions
16 on the matter, and it is our position that there should
17 be certainly no requirement of any type placed on
18 specific -- on individual members of the public who are
19 just attending the hearing because it happens to be in
20 their community and convenient and, say, an evening
21 session or something where they can come in they decide
22 they want to make some sort of submission.

23 I think it would be -- it is entirely
24 unworkable under those circumstances at the satellite
25 hearings to require any kind of advance filing. It

1 is -- and it would certainly stifle whatever enthusiasm
2 might be out there for obtaining what can often be
3 quite valuable input into your deliberations.

4 That said, of course if that results in
5 specific allegations with respect to specific incidents
6 being made, the persons against whom those allegations
7 are made would have an opportunity to reply should they
8 choose to do so.

9 I might say that my experience acting on
10 behalf of proponents in other matters has been that
11 local hearings often do lead to those kinds of
12 submissions and proponents are wise if they exercise a
13 good deal of discretion in the degree to which they
14 insist upon exercising extensive rights of reply.

15 THE CHAIRMAN: Or cross-examination?

16 MR. CAMPBELL: That too, Mr. Chairman.

17 THE CHAIRMAN: Okay. Mr. Freidin?

18 MR. FREIDIN: Just on the last matter. I
19 am not too sure whether we have to decide that right
20 now. I mean, I think that we could give some
21 consideration perhaps to including something in the
22 notices that indicate, although it is not required that
23 they give advance notice, if they can it would be
24 appreciated.

25 I am just saying, I don't think that we

1 should just throw that out the window, but...

2 THE CHAIRMAN: I just thought it would be
3 wise to raise it now since we are discussing the whole
4 idea of advance notice and rights of reply, limited or
5 otherwise, that we all are cognizant of the fact that
6 there is another body out there which is the general
7 public which are not represented by counsel and which
8 may well be attending the local hearings for the very
9 purpose of raising either specific allegations or
10 general concerns.

11 MR. FREIDIN: If you are in fact raising
12 the question as to whether those people should somehow
13 be bound by an order you would make now to give those
14 specific allegations, I --

15 THE CHAIRMAN: I am not suggesting that.
16 I just want to make sure that counsel had also in their
17 thinking, in their arguments had either by omission not
18 referring to it, had taken it into account or
19 otherwise.

20 MR. FREIDIN: And just on the first point
21 raised by Mr. Castrilli. I believe that Ms. Murphy
22 would agree with my submission if I indicated that I do
23 not believe that what did or did not occur in any
24 specific hearing other than this one should be the
25 thing which should guide you.

1 As Ms. Murphy said, what should guide the
2 Board is to determine whether on the facts of this
3 case, the particular circumstances, that the parties
4 find themselves in this case is what should govern the
5 decision you make.

6 THE CHAIRMAN: I think that is noted.
7 However, it is also helpful to know what went on with
8 other types of inquiries or other proceedings which
9 might be analogous or otherwise.

10 MR. FREIDIN: The last matter, Mr.
11 Chairman. By my calculation looking at the calendar we
12 have eight and a half days, that is counting today as a
13 half day, left to deal with cross-examination or
14 anything else before the October break.

15 My last count was that there were eight
16 parties who were here or we believe will be here
17 represented by counsel to cross-examine on this panel,
18 eight lawyers and a re-examination by a ninth in eight
19 and a half days.

20 I raise it for this purpose: I would
21 like to sort of have the Board take a poll and see how
22 long people are going to take, because if it appeared
23 that there was a chance of finishing before September,
24 which I think is in everyone's interest, I would
25 suggest that we sit longer than usual if in fact it

1 looked like we could finish by the end of September.

2 But if it is clear from the poll you take
3 that that is absolutely impossible, I don't believe
4 that we should sort of double the problem and sit
5 longer in an attempt to do that which is impossible and
6 have them come back in November.

7 So I would ask, Mr. Chairman, if you
8 could get some indication from the counsel who are
9 present here as to how long they believe they will be.

10 THE CHAIRMAN: Okay. Just before we get
11 to that, Mr. Freidin, I just want to come back to one
12 clarification that the Board wanted which arose out of
13 Ms. Murphy's submissions, and that is:

14 Where she indicates on page 2 of her
15 submission, her letter, under the month of September,
16 for example, that MNR provide statements of evidence
17 for Panels 8, 9 and 10 identifying the appropriate 30
18 to 40-day periods for receipt of interrogatories, does
19 she imply or infer that the period for the receipt of
20 interrogatories shall run from the delivery of each
21 statement individually?

22 MR. FREIDIN: I think that is her intent,
23 yes.

24 THE CHAIRMAN: Not one 30 to 40-day
25 period for the three of them together?

1 MR. FREIDIN: No. No, I think, as we
2 indicated, we have every intention of releasing those
3 as they are done so we expect they will be different 30
4 and 40-day periods.

5 MRS. KOVEN: But not a serial 30 or
6 40-day period, not over a stretch of 90 days?

7 MR. FREIDIN: No, no, that's true.

8 MRS. KOVEN: If you have three days
9 between the release of three reports, then it will in
10 fact be 40 days?

11 MR. FREIDIN: That's right.

12 THE CHAIRMAN: And when you go to page 3
13 and you talk about the month of December when the
14 statements of evidence for Panels 11, 12, 13, 14 with
15 proposed dates for receipt of interrogatories, I take
16 it that a similar time frame is contemplated, 30 to 40
17 days, but from the date of release of each individual
18 statement; is that correct?

19 MR. FREIDIN: That is my understanding.
20 It may be that she is thinking with the Christmas break
21 that there may be a situation where you may get two or
22 three at once.

23 THE CHAIRMAN: That it may be a longer
24 period?

25 MR. FREIDIN: Yes, that is my

1 understanding.

2 That is Mr. Campbell's understanding, he
3 indicates, from a conversation with Ms. Murphy and he
4 has indicated, and I have heard this before as well,
5 that by putting in a specific date in the letter which
6 goes out with the statement, it gives people at least
7 some sort of context in which they can make the
8 decision as to whether they have to get at the stuff
9 right away or not.

10 THE CHAIRMAN: Okay. And, lastly, on the
11 same page, if you go to the month of January when the
12 last three witness statements are to be delivered, does
13 that mean in Ms. Murphy's thinking that the receipt of
14 the interrogatories will be completed with answers some
15 time in April or May of next year?

16 MR. FREIDIN: I don't know whether we can
17 say April or May. I think that again it will be 30 or
18 40 days from the time that those witness statements --

19 THE CHAIRMAN: Plus the time for
20 response.

21 MR. FREIDIN: Oh, yes, plus. And we
22 will, as we have in past, attempt to file our answers
23 to those interrogatories as expeditiously as possible.

24 THE CHAIRMAN: What we are trying to
25 gather is just a ballpark date as to when the parties

1 would have all of the witness statements and all of the
2 interrogatories duly answered.

3 And it looks like, based on what you are
4 saying, it would be some time around April or May of
5 1989, based on this submission.

6 MR. FREIDIN: I think, sort of in the
7 ballpark. I am thinking, if the last statement is
8 delivered on January 31st and you add 40 days to that
9 and then you add a few days for response to that, sure,
10 we are into March anyway.

11 THE CHAIRMAN: Okay. In and around that
12 area?

13 MR. FREIDIN: There was one thing on
14 there. Yesterday, Mr. Chairman, I noted that between
15 December and January Ms. Murphy put in brackets: Note
16 there is usually a break for Christmas. And I was
17 going to indicate to her if that was in some way
18 indicating that MNR people, and particularly counsel
19 for MNR, were not going to get a break at Christmas, I
20 wasn't going to support her position.

21 But, in any event, she said that is not
22 what it meant.

23 THE CHAIRMAN: Okay, thank you.

24 Yes, Mr. Williams?

25 MR. WILLIAMS: Mr. Chairman, if I might,

1 just one further small point of clarification with
2 regard to the motions of procedure that we were
3 discussing a few moments ago.

4 It seems to me that in Mr. Cosman's
5 comments yesterday that the implication or the
6 inference was that the Federation supported the remedy
7 that they are proposing to resolve the problems they
8 saw implicit in their motion.

9 I did make it clear, Mr. Chairman, that
10 we indeed supported the principle related to the
11 concern they had, but I also want to make it clear that
12 we did not support the particular remedy that they are
13 offering as a solution to the problem that confronted
14 them, but rather we are fully in support of the
15 proposal put forward in the letter submitted by the
16 Ministry and as set out in my letter.

17 THE CHAIRMAN: And the proposal by the
18 Ministry that they put forward to deal with Mr.
19 Cosman's concerns?

20 MR. WILLIAMS: Correct.

21 THE CHAIRMAN: Thank you.

22 MR. WILLIAMS: And that was set out in my
23 letter, but I didn't refer to that particular second
24 point that I intended to do last evening.

25 MR. CASSIDY: Mr. Chairman, I would like

1 to, after making friends with this thing, I would like
2 to speak about that issue of advance notice in respect
3 of the general public just briefly.

4 I have a concern that in relation to any
5 right of reply that is granted there, I could easily
6 envisage the situation where a member of the public
7 would appear in the satellite location and would not be
8 able to make a specific allegation in respect of
9 company "x" on a particular day, but may in fact talk
10 about a particular practice that is being carried on in
11 his area.

12 I think that is easily envisaged and I
13 would expect and would take the position that my
14 clients are going to be, in many cases, the persons who
15 are bearing the brunt of that allegation because they
16 carry on many of the timber harvesting and timber
17 management activities and, therefore, the right of
18 reply, in my view, should not be restricted in any
19 specific sense because we may not get specifics.

20 And I mean that as no slight against
21 members of the general public who don't have specific
22 details, but I don't want to get into the fight a year
23 from now that it is a specific versus a general
24 allegation because I think, in most cases, they are
25 going to be general.

1 I think Mr. Freidin has a good suggestion
2 and that is that we address that point when we start to
3 hit the road, as it were, or start to deal with members
4 of the general public and work it in at that time. But
5 if you are disposed to deal with it now, my position is
6 that it should not be restricted to a specific
7 allegation, it should be a matter of open reply.

8 THE CHAIRMAN: Mr. Cassidy, in the
9 general course, it last been the Board's long-standing
10 practice that when the members of the general
11 unrepresented public wish to address the Board on any
12 matter, the only test for the Board is relevancy and
13 they can make submissions, file or read into the record
14 a letter or approach the Board in a manner which
15 sometimes wouldn't be countenanced when parties are
16 represented by counsel. There is a very wide latitude
17 given to the general public.

18 The parties to the hearing who are
19 represented by counsel have a right, as you know, to
20 "cross-examine" even members of the public, question
21 them, but the Board has a long-standing practice of not
22 countenancing cross-examination in the usual
23 connotation of that term as used in adversarial or
24 court proceedings.

25 Counsel who wish to go for the jugular,

1 so to speak, of members of the unrepresented public
2 will be brought to a screeching halt by the Board if
3 that occurs.

4 And, as you are probably aware, many
5 counsel, unless they feel it is in the absolute
6 interest of their clients, often forego
7 cross-examination of the general public and the same
8 applies with respect to allegations that the public
9 makes one way or the other.

10 Sure, they can be questioned on them and
11 unsubstantiated facts should not be presented to the
12 Board and just left there hanging, but you must be
13 aware that the Board has the right and statutory power
14 to give whatever evidence it hears the appropriate
15 weight and we, of course, take into account the manner
16 in which that evidence is presented and whether the
17 evidence is substantiated or unsubstantiated and all
18 those other factors in terms of giving it appropriate
19 weight.

20 So I do not think we are going to get
21 into a real discussion, for the purposes of this
22 motion, as to rights of reply or rights of
23 cross-examination with respect to the general public
24 when we travel around to the satellite locations.

25 MR. CASSIDY: That's fine.

1 THE CHAIRMAN: We will deal with any
2 specific problems, if you want to call them that, that
3 arise on that particular occasion.

4 MR. CASSIDY: Fine.

5 THE CHAIRMAN: Thank you.

6 Are you ready to proceed or perhaps we
7 should --

8 MR. CASSIDY: Do you want to do that
9 polling at this point, Mr. Chairman?

10 THE CHAIRMAN: Right. I am sorry, Mr.
11 Freidin.

12 Can counsel give us an indication as how
13 long they are going to be in cross-examination of this
14 panel?

15 MR. CASSIDY: Since I am standing up, I
16 can start and tell you that I can probably be done by
17 the time we take our next break, and which I would
18 assume would be less than an hour.

19 THE CHAIRMAN: Mr. Castrilli?

20 MR. WILLIAMS: Mr. Chairman, I think I
21 was to follow Mr. Cassidy.

22 THE CHAIRMAN: Very well, Mr. Williams.

23 MR. WILLIAMS: My best estimates are a
24 day.

25 THE CHAIRMAN: One day.

1 Mr. Castrilli?

2 MR. CASTRILLI: Mr. Chairman, I won't be
3 going after Mr. Williams, I anticipate going some time
4 next week. At that time I would anticipate being
5 approximately a half day to a day at most.

6 THE CHAIRMAN: Does anyone have any idea
7 how long Mr. Hunter might be?

8 MR. McKIBBON: No, sir. We will have to
9 review the evidence that has been given with him.

10 THE CHAIRMAN: Mr. Campbell?

11 MR. CAMPBELL: I would expect to be less
12 than half a day, Mr. Chairman, and there are some
13 scheduling difficulties associated with these eight and
14 a half days and, subject to any objections that my
15 friends might take, I am prepared, should there develop
16 a gap on the 16th, to fill in that time if that helps
17 in using it most efficiently.

18 I know that, for instance, Mr. Hunter and
19 I believe Mr. Edwards are aiming at doing their
20 cross-examinations in the week of the 26th, and rather
21 than insist on holding to the end with the possibility
22 of running out of time for September, if a gap opened
23 up towards the end of next week I would be prepared to
24 go then, if that was acceptable to my friends.

25 THE CHAIRMAN: Well, Mr. Freidin, we are

1 up to about three and a half days of the parties that
2 have been in a position to state their...

3 MR. FREIDIN: The Ontario Metis and
4 Aboriginal Association?

5 THE CHAIRMAN: I am sorry.

6 MR. REILLY: Mr. Chairman, I anticipate
7 going toward the end of next week, I understand,
8 wherever we end up next week, but probably a couple of
9 hours.

10 THE CHAIRMAN: Two hours.

11 MR. CASTRILLI: Mr. Chairman, I am sorry,
12 Mr. Colborne isn't here. I understood he would be
13 cross-examining probably the beginning of the day on
14 the 14th, at the beginning of our sittings for next
15 week and while I cannot recollect exactly, I believe I
16 recall him indicating that he would be at least a day.
17 That obviously is what I recollect from last week.

18 And I should just indicate again, if I
19 hadn't before, that I will not be here on the 14th so I
20 would anticipate starting no earlier than the 15th.

21 THE CHAIRMAN: Well, according to my
22 calculations I am up to about five days and that is
23 without Mr. Edwards and Mr. Hunter.

24 We have Mr. Cassidy for an hour, Mr.
25 Williams for a day, Mr. Castrilli for a half to a day,

1 call it a day -- sorry, Mr. Castrilli.

2 MR. CASTRILLI: As long as I am not held
3 to that.

4 MR. CASSIDY: Is that another trend line,
5 Mr. Chairman?

6 THE CHAIRMAN: And then Mr. Campbell for
7 half a day, and then Mr. Colborne for a day, and then
8 we have Mr. Edwards and Mr. Hunter, and Mr. Hunter may
9 well be a day.

10 MR. FREIDIN: Mr. Reilly is on for two
11 hours for the Metis and Aboriginal,

12 So the way I look at it, if you take the
13 Metis and Aboriginal and Mr. Campbell and you actually
14 said: all right, that is another day, there are four
15 days and that is without hearing from Hunter, Colborne
16 and Edwards.

17 If you take Hunter and give him two --
18 give him three -- what I am saying is it looks like, if
19 people really made an effort to try to stick to these
20 times, there is an outside chance we are actually going
21 to make it.

22 So my submission, until we hear from Mr.
23 Hunter and Mr. Colborne, we proceed on the basis that
24 we have a chance of making it which means perhaps
25 sitting a little bit longer or perhaps starting a

1 little bit earlier as well to try and get this panel in
2 by the end of September.

3 THE CHAIRMAN: Well, we will certainly do
4 our best.

5 MR. FREIDIN: Can you just confirm for me
6 on September 14th, which is next Wednesday, we are
7 starting at 9:30 or one o'clock.

8 THE CHAIRMAN: No, we are starting at
9 one.

10 MR. FREIDIN: And the 16th, are we
11 planning to sit a full day or part, that's a Friday?

12 THE CHAIRMAN: Probably two o'clock or
13 something like that, but bearing in mind that depending
14 on how we are coming along we may start a bit earlier
15 or sit a bit later and pick up some of that extra time.

16 MR. FREIDIN: And is Friday September the
17 30th an absolute out date? I know we are already
18 sitting four days that week, the last day of the week,
19 September the 30th, a Friday...

20 THE CHAIRMAN: No, I suppose it is not
21 absolutely out, in the sense if it meant finishing the
22 panel we might consider holding over just to get rid of
23 the panel.

24 MR. FREIDIN: I am just trying to get
25 some sense of the time --

1 THE CHAIRMAN: I'm sorry, Panel, we are
2 not trying to get rid of you in the pejorative sense.

3 MR. FREIDIN: Thank you, Mr. Chairman.

4 THE CHAIRMAN: Mr. Cassidy, I guess we
5 can start off at this time with you.

6 CROSS-EXAMINATION BY MR. CASSIDY:

7 Q. I have a few questions for you, Mr.
8 Kenrick. And I believe in your evidence yesterday you
9 described -- briefly you described how soils
10 differences influence methods of harvesting in various
11 areas and can influence the use of or the choice of use
12 of different types of harvesting equipment, and I
13 believe you referred to high flotation tires being used
14 in some areas and not used in others.

15 Do you recall that?

16 MR. KENRICK: A. Yes.

17 Q. And I am wondering if you can tell me
18 that if soils differences that you have referred to or
19 mentioned also can affect the methods used in various
20 regeneration activities such as site preparation and
21 the use of equipment, do they cause equipment to be
22 used in one area and not used in another, and
23 specifically I am thinking of equipment like Bracke's
24 or barrels and chains?

25 A. The question is probably better

1 directed at a forester, but it has been my observation
2 that, yes, the equipment will change.

3 Q. Thank you. And I appreciate you are
4 not a forester, but as you have given evidence in this
5 area, can you tell me if soil differences also affect
6 the management of individual stands and/or working
7 groups within a forest management agreement within your
8 area of knowledge?

9 A. I think that question is best
10 answered by a forester.

11 Q. All right. If I can refer you then
12 to page 58 of the witness statement, Panel 6. Do you
13 have it?

14 A. Yes.

15 Q. I am looking at the fourth full
16 paragraph and the last two sentences in that paragraph
17 which commences:

18 "The large amount of water in
19 northwestern Ontario..."

20 A. Yes.

21 Q. "...accounts for much of the
22 recreational attraction in that portion
23 of the province and this large amount of
24 water...", I am paraphrasing, "...also
25 serves to complicate the planning of both

1 roads and timber harvesting."

2 And I would like to ask you, while I
3 appreciate it is a complicated planning process, can
4 you tell me if the philosophy of integrated resource
5 management that you have heard about in this hearing
6 and that is embodied in the timber management planning
7 process, can you tell me if it assists in the
8 resolution of those complications and the planning of
9 roads in the timber harvesting?

10 A. Most certainly. I believe another
11 statement I made in the evidence was the presence of
12 water quite often becomes the interface, if you will,
13 between harvesting activities and recreational uses.

14 Integrated resource management in essence
15 is the driving force behind some concepts like areas of
16 concern that may well be placed on shoreline areas.

17 The whole notion of modified management
18 areas which will be discussed in more detail later,
19 optimizing the benefits and minimizing the adverse
20 effects of one area, yes.

21 Q. All right. Thank you. I want to now
22 refer you to page 60 within Panel 6.

23 MR. CASSIDY: I believe that's Exhibit
24 210, is it, Mr. Chairman?

25 THE CHAIRMAN: 209.

1 MR. CASSIDY: 209. Thank you.

2 Q. And if I can refer you to the first
3 paragraph under the heading climatic variation. Do you
4 see that?

5 MR. KENRICK: A. Yes.

6 Q. You indicated there that annual
7 precipitation in the northwestern region is twice that
8 amount east of Lake Superior and Georgian Bay, and you
9 then go on to indicate that that pattern is significant
10 in terms of fire losses in the forest.

11 Can you tell me: Do you know, sir, if
12 temperature extremes or changes in the northwestern
13 region also contribute to large fire losses in that
14 area?

15 A. Logic would tell me that longer
16 periods of warmer temperatures and the absence of
17 precipitation contributes towards some of our fire
18 losses in the northwest. I --

19 Q. All right. So it is also -- sorry?

20 A. I haven't looked at temperature
21 charts or whatever for the northwest. I would suspect
22 that's true.

23 Q. All right. Thank you. I just want
24 to move on and clarify a few further points in the
25 report, and I would refer you now to page 77 and I am

1 looking at the last paragraph, page 77, the last
2 bulleted paragraph, and that paragraph begins:

3 "The trade sector is the third largest in
4 the province but the second largest in
5 Ontario."

6 The last paragraph in that sentence says:

7 "Again, in single industry northern
8 communities, the health of this industry
9 is dependent largely on the primary
10 resource-based industries."

11 I take it that this industry refers to
12 the trade sector; is that correct?

13 A. That's correct.

14 Q. Is it fair to say, Mr. Kenrick, that
15 in communities that are not considered to be single
16 industry northern communities that the trade sector is
17 also heavily influenced in those communities by the
18 health of primary resource-based industries such as the
19 logging industry?

20 A. I believe so.

21 Q. So that there is a large degree of
22 dependence by the trade sector on the primary
23 resource-based industries in most of the communities in
24 northern Ontario; is that correct?

25 A. As a general statement, I believe so.

1 Q. Thank you. Your panel of course is
2 giving a general overview; is that correct?

3 A. Yes.

4 Q. And in fact the more specific detail,
5 which I am not going to get into with you, but the more
6 specific detail on data collected and data information
7 is going to be coming in Panel 7, and it is fair to
8 say, is it not, that it is at that level of detail that
9 forest managers make their decisions; that is, the
10 detail level that is going to be provided in Panel 7 as
11 opposed to the level of data in this panel; is that
12 correct?

13 A. Correct.

14 Q. Thank you. Now, if you turn the page
15 to page 78. And I just have a question in respect of
16 Figure 18, and I am curious about the content of public
17 administration labour figures referred to in there.

18 First of all, these figures were obtained
19 from Statistics Canada; is that correct?

20 A. That's correct.

21 Q. Can you tell me if the Statistics
22 Canada reference to public administration, does that
23 refer to public servants, such as yourself, who might
24 be engaged in timber management activities or some part
25 thereof?

1 A. I believe so.

2 Q. It is not a separate category?

3 A. No.

4 Q. If you find out differently, and I
5 would ask you to check and confirm that, if you find
6 out differently can you so advise me?

7 A. Yes.

8 Q. Thank you. Now, I want to refer you
9 to Exhibit 29.

10 MR. CASSIDY: I believe I advised Mr.
11 Mander that I may be looking at it so I hope the Board
12 has it in front of them.

13 THE CHAIRMAN: We do.

14 MR. CASSIDY: Thank you.

15 MR. FREIDIN: What exhibit?

16 MR. CASSIDY: Exhibit 29.

17 Q. If I can turn you -- while your
18 counsel is getting that exhibit, Mr. Kenrick, if I can
19 turn to page 129 of the witness statement and I believe
20 I am looking at the paragraph commencing:

21 "Provincial park visitors..."

22 Do you see that?

23 MR. KENRICK: A. Yes.

24 Q. Bear with me a second. And you
25 indicate in there that Figure 40, which is on the next

1 page, it indicates that in 1986, 219 of - and I will
2 paraphrase - the provincial parks hosted 7.4-million
3 visitors and you have got your reference there as No.
4 57.

5 And if we turn to page 160 we will see
6 that you have referenced Exhibit 29 being the OMNR
7 Statistics 1987 and, in particular, you have referenced
8 page 46 of Exhibit 29. Do you see that?

9 A. I wonder if I might have a copy of
10 that exhibit.

11 Q. Do you have it in front of you?

12 A. Yes, I do.

13 Q. Now, I would like to refer you first
14 to page 47 of Exhibit 29, and we will come back to your
15 witness statement in a minute, but if you can refer to
16 page 47 of Exhibit 29 it states at the top -- after
17 setting out some figures below, it states:

18 "Growth of provincial parks."

19 And if I can refer you to the number of
20 provincial parks which is in the last two columns on
21 the right, providing the number and the actual hectares
22 of those parks, would you agree with me that if we look
23 at from 1983-1986 the number of parks increased from
24 139 to 219?

25 A. From 1983-1986, that's correct.

1 Q. Which is obviously an increase of 80
2 parks in three years; is that correct?

3 A. That's correct.

4 Q. And if we look at the hectares that
5 is represented by those parks or those parks made up,
6 we have 5,476,369 in 1983, and then in 1986 we have
7 5,659,105.

8 And I did a mathematical calculation
9 which indicates that that is approximately 182,736 --
10 well, that is that many hectares and, subject to my
11 math being correct, that you would agree that it
12 increased by that amount as indicated in those figures?

13 A. Yes.

14 Q. And if I then can take you back to
15 page 46 which is apparently where you got the reference
16 on page 129 of your witness statement, I would like to
17 look at the figures for those three years if I could.
18 And in terms of the total visitors, which is what you
19 referred to in your statement, it appears that there
20 was a large increase from 1982 to 1983 in total
21 visitors if we look at the last column on the
22 right-hand side at the very top of page 46, there was a
23 large increase of some 6.2-million to 7.6-million; is
24 that correct?

25 Do you see that?

1 A. It appears to be, yes.

2 Q. And are you aware of any reason for
3 that increase, and you may wish to refer to the notes
4 for that page which are on page 47?

5 A. I guess several points. One, it
6 appears between 1982 and '83, first of all, there is
7 more parks in the system, there is an additional four
8 parks which may explain some of it.

9 Secondly, there is a footnote on 1983
10 which refers to -- includes the Ontario visitors and
11 traffic count visitors for Wasaga Beach Provincial
12 Park. I don't know the history of development of
13 Wasaga Beach, but it suggests here that we did
14 something different in terms of our method of counting
15 that year.

16 Q. So it is possible that that increase
17 is attributable to a differentiation in counting, that
18 you were adding people who you had not normally counted
19 in 1982; is that correct?

20 A. It could be.

21 Q. All right. If we then look from --
22 the figure from 1973 to the figure from 1986, that
23 figure has in fact declined in total number of
24 visitors; is that correct?

25 A. From 1973?

1 Q. I am sorry, '83, I didn't think I
2 said '73. In other words, it has gone from 7,647,000
3 approximately to 7,488,000?

4 A. That appears to be so, yes.

5 Q. All right. Now, there appears to be
6 a slight increase from 1984-1985 but it has then
7 declined from 85-86; do you see that?

8 A. That's correct.

9 Q. Now, I note that the average number
10 of days that a camper stays, which is in roughly the
11 middle column, seems to have increased by .2 of a day.

12 But is it fair to say, Mr. Kenrick, by
13 looking at these figures that except for a growth from
14 1984-1985 the total number of visitors, notwithstanding
15 increases in the number of parks and the total size of
16 the parks that we saw on page 47, has in fact declined
17 from 1983-1986?

18 A. The figures here would support that.
19 I guess where I would be a little cautious is that is
20 an awful short period of time to detect trends, that
21 could be in response to a rainy summer, for instance.
22 It could well have been in response to things like the
23 recessionary period in the early 1980s.

24 Q. So there are a number of factors
25 which might influence a decline?

1 A. That's correct.

2 Q. But nevertheless, in the period in
3 which 80 new parks had been created from 1983-86, there
4 is in fact a corresponding decline in numbers attending
5 parks; is that correct?

6 A. Yes.

7 Q. Thank you. Now, I just want to come
8 back to integrated resource management, Mr. Kenrick,
9 and I want to refer you to page 91 of the witness
10 statement and the second paragraph which is in
11 approximately the middle of the page in which you
12 indicate that the fact that a majority of the sites,
13 and I am paraphrasing -- correct me I am getting the
14 context wrong.

15 But you indicate that a majority of the
16 sites would show - I am referring here I believe to
17 archaeological sites - appear to be adjacent, generally
18 adjacent to long-used travel corridors, the lakes and
19 rivers, and you say in that paragraph that that has
20 special significance for the undertaking because
21 logging generally avoids or has limited impact upon the
22 major intercourses and the vast majority of these sites
23 are unaffected by the undertaking.

24 I am wondering if you can tell me: Is
25 this another example of the integrated resource

1 management philosophy as practised by the forest
2 products industry in the timber management planning
3 process; is this another example of that at work?

4 A. I am not sure I would attribute it to
5 integrated resource management. The two activities --
6 there is a natural sorting that goes on in terms of the
7 land bases that are used. I guess I am just not sure I
8 would attribute it to IRM, if you will. It is out of
9 good luck maybe as much as good management.

10 Q. All right. But does the integrated
11 resource management philosophy take into account that
12 the good luck that these matters tend to be beside
13 waterways and accounts for them in the way in which it
14 plans timber management or focuses timber management
15 activities?

16 A. I would say yes.

17 Q. In other words, it doesn't take that
18 good luck and then ignore it and allow activities or
19 cause activities to be taken on archaeological sites
20 nonetheless?

21 A. No, sir.

22 Q. Right. Now, I just have one final
23 question and it is for Mr. Crystal.

24 Mr. Crystal, toward the end of your
25 evidence you indicated - and I am looking at one of the

1 overheads that is now part of Exhibit 215 and I am
2 looking at the third to last overhead which is -- for
3 the purposes of the record I will read it in. It is
4 part of your policy that states:

5 "Transfers of land or increased access to
6 natural resources to be subject to
7 existing communities."

8 MR. CRYSTAL: A. Commitments

9 Q. I am sorry, commitments. And I
10 believe that can also be found in your witness
11 statement on page 181 under the -- being the first full
12 paragraph on page 181, and I believe in your evidence
13 today you referred to them as existing third party
14 commitments?

15 MR. CRYSTAL: A. Yes.

16 Q. Can you tell me if forest management
17 agreements would fall within that category of third
18 party commitments?

19 A. I think that they would be, but I
20 would note when I say, subject to existing commitments,
21 I would think what that means is that they would have
22 to be accommodated, not necessarily maintained.

23 Q. You mean the agreements would have to
24 be accommodated before the transfers of land?

25 A. Yes, I think it's fair to say that is

1 a policy.

2 Q. What do you mean by accomodated, sir?

3 A. That the parties would have to come
4 to terms on the issue.

5 Q. In other words, there would be
6 consultation between the Crown for Ontario, presumably
7 represented by Ministry of Natural Resources and the
8 FMA holder before there would be transfers of land to
9 natives?

10 A. I think that that would be correct,
11 yes, that would have to be done.

12 Q. All right. Has that in fact ever
13 taken place to date to your knowledge?

14 A. Not that I am aware of.

15 Q. And is that part of Ontario policy
16 that that would in fact be done?

17 A. The Ontario policy, as I have set it
18 out, the specific that you stated is not, but I think
19 that one would flow from the other.

20 Q. All right. When you mentioned
21 consulted -- or when you and I were discussing it just
22 now, when you say consultation or accommodation, to use
23 your words.

24 A. Yes.

25 Q. Would that be done -- is there any

1 process that you envisage by that word accommodation?
2 In other words, would that take place well in advance
3 of a proposed transfer or would that take place on the
4 eve or what do you have in mind?

5 A. Well, I think that the individual
6 circumstances would obviously dictate, but I certainly
7 would hope that every and I would expect that every
8 effort would be made to have this discussion designed
9 to achieve an accommodation well in advance of any
10 transfer.

11 MR. CASSIDY: Those are my questions.

12 THE CHAIRMAN: Thank you, Mr. Cassidy.

13 MR. CASSIDY: I note for the record, half
14 an hour.

15 THE CHAIRMAN: Duly noted. We will take
16 a break for 20 minutes. Thank you.

17 ---Recess taken at 2:30 p.m.

18 ---Upon resuming at 3:55 p.m.

19 THE CHAIRMAN: Thank you, ladies and
20 gentlemen. Please be seated.

21 MR. FREIDIN: One matter of
22 clarification. There is some confusion in the room as
23 to whether we are going a full day tomorrow, as
24 discussed last week, or whether we are going to stop
25 early?

1 THE CHAIRMAN: A full day tomorrow?

2 MR. FREIDIN: Yes. Tomorrow is Thursday.

3 I just recall last week we indicated that we were
4 cutting off the Friday because of the Board meeting on
5 Friday and my understanding was we were going to sit a
6 full day tomorrow, but some people believe that that is
7 not the case.

8 Could you please advise what time we will
9 finish tomorrow.

10 THE CHAIRMAN: I think you are right,
11 that is what we talked about. What concerns us is that
12 we are not sure we conveyed that message to the travel
13 agents, we are not sure when our flights are.

14 MR. CAMPBELL: I can tell you when your
15 flights are, Mr. Chairman, because I checked before
16 going and arranging my flights and you are booked on
17 the 5:10 Air Canada flight.

18 THE CHAIRMAN: That is what I was afraid
19 of. Is that going to make a difference with our
20 schedule the way we have concocted it to this point,
21 Mr. Freidin, if we did leave at 5:10?

22 MR. FREIDIN: I am not so concerned about
23 maybe the time tomorrow as people have got flights at
24 different times and I think they would like to know.
25 I guess some people are booked on the 5:10, I guess,

1 and want to know whether they should change them, and I
2 guess I hear that you are saying no.

3 THE CHAIRMAN: I think we will try and
4 stick to 5:10 if that is okay with the parties. I
5 apologize for indicating last week that we might sit
6 later, but it now appears that it may not be necessary,
7 in order to complete this panel, for the rest of this
8 month.

9 So we will leave tomorrow at 5:10 so
10 everyone can book accordingly and if you do not get out
11 to until eight or nine o'clock that is because we
12 booked first.

13 Mr. Williams, just before you commence, I
14 just want to take care of one short housekeeping
15 matter. I have left on Mr. Mander's table over there a
16 list of the people who accompanied the Board on August
17 31st on the site visit of the Great Lakes Forest
18 Products Mill that the Board took last week.

19 What we have got here is a list of the
20 people who attended. The Board, as you are probably
21 aware, visited the mill and went through all of the
22 operations of the mill in the one morning. And I would
23 ask the court reporter, whom I have given a copy of
24 this list, to please set out the list in the transcript
25 so people outside of the hearing can also be apprised

1 of who accompanied the Board.

2 Thank you.

3 SITE VISIT - AUGUST 31, 1988

4 TOUR OF GREAT LAKES FOREST PRODUCTS
5 INTEGRATED MILL - THUNDER BAY

6 LIST OF PEOPLE WHO ATTENDED

6	Michael Jeffery	Environmental Assessment Board
7	Anne Koven	Environmental Assessment Board
8	Elie Martel	Environmental Assessment Board
9	Doug Mander	Environmental Assessment Board
10	Catherine Blastorah	Ministry of Natural Resources
11	Ron Waito	Ministry of Natural Resources
12	Bruce Campbell	Ministry of the Environment
13	Mark Sutterfield	Ministry of the Environment
14	Paul Cassidy	Ontario Forest Products
15		Industries Association/OLMA
16	Robert Shibatani	Ontario Forest Products
17		Industries Association/OLMA
18	Canadian Pacific Forest Products Limited	
19	<u>Representatives (Great Lakes Region)</u>	
20		
21	W. B. Wolfe	Vice-President - Manufacturing
22		(Great Lakes Region)
23	D. R. Burrows	Manager - Thunder Bay Mills
24		Operations
25	J. M. Patterson	Manager - Newsprint Operations

1 L. I. Seed Manager - Kraft Operations
2 V. Bochko Manager - Building Products
3 Operations
4 R. Chambers

5

6 THE CHAIRMAN: Mr. Williams?

7 MR. WILLIAMS: Mr. Chairman, just apropos
8 of the matters raised by Mr. Freidin, if it is of
9 assistance to the Board, assuming we will be going
10 until what, 5:00 or 5:30 this evening, I am reasonably
11 confident that I would be finished by noon hour
12 tomorrow.

13 THE CHAIRMAN: Well, that would certainly
14 help in terms of being able to leave around 2:00 or
15 2:30 tomorrow.

16 MR. WILLIAMS: I was hoping that would be
17 the case, but...

18 THE CHAIRMAN: Shall we assist you in
19 anyway?

20 MR. WILLIAMS: You are one to do so, Mr.
21 Chairman.

22 THE CHAIRMAN: Very well.

23 MR. WILLIAMS: Mr. Chairman, given that
24 Mr. Crystal has elucidated the complex native peoples
25 issues so well in his testimony, I want to advise the

1 Board that I will not be questioning Mr. Crystal on
2 that aspect of the evidence before us.

3 So if he feels that he wanted to remove
4 himself from the meeting and didn't have to sit here
5 for the rest of the afternoon that is his decision, but
6 I will not be asking questions on the native peoples
7 issue.

8 THE CHAIRMAN: It is fine with the Board
9 if you want to absent yourself from the panel at this
10 point, Mr. Crystal.

11 MR. FREIDIN: No, I think Mr. Crystal is
12 so interested in the topic that he wants to stay.

13 MR. CRYSTAL: Whatever you say, counsel.

14 THE CHAIRMAN: You have not been so
15 lightly dismissed, Mr. Crystal.

16 Very well.

17 MR. FREIDIN: I only said that because I
18 know he can't talk to me.

19 THE CHAIRMAN: Very well.

20 CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. Mr. Kenrick, your legal counsel
22 commenced his examination-in-chief on your report of
23 May 31st, 1988. Before cross-examining you on that
24 evidence, I would like to go back to basics and explore
25 with you the thrust and purpose of Panel 6 as outlined

1 on pages 22 to 24 of your statement of evidence.

2 Mr. Kenrick, that opening statement of
3 evidence comprised of 18 paragraphs was obviously
4 authored by you and Mr. Crystal, given that both of
5 your signatures are affixed thereto; is that correct?

6 MR. KENRICK: A. That's correct.

7 Q. And according to that statement of
8 evidence, you are responsible for the first 15
9 paragraphs thereof; is that correct?

10 A. That's correct.

11 Q. Mr. Kenrick, I have provided to you
12 and to the Board members and counsel present extracts
13 from the Environmental Assessment Act and, in
14 particular, Section 1(c) which defines the environment
15 and subsection 5(3) which describes the contents of an
16 environmental assessment necessary to satisfy the
17 requirements under the Act. Do you have those in hand?

18 A. That's correct.

19 MR. WILLIAMS: I presume, Mr. Chairman,
20 given the nature of the document, it doesn't have to be
21 entered as an exhibit.

22 THE CHAIRMAN: No, I do not think we have
23 to exhibit Ontario Statutes.

24 MR. WILLIAMS: No.

25 Q. Mr. Kenrick, according to subsection

1 5(3) clause (c):

2 "An environmental assessment submitted to
3 the Minister pursuant to subsection (1)
4 shall consist of a description of the
5 environment that will be affected or that
6 might reasonably be expected to be
7 affected directly or indirectly."

8 Is that correct?

9 MR. KENRICK: A. That's correct.

10 Q. In your opening statement of purpose
11 you specify that the environment in question is both
12 the natural and economic environment. Do you see that
13 in paragraph 1 of your statement?

14 A. Natural and socio-economic
15 environment, mm-hmm.

16 Q. Correct, natural and socio-economic.
17 Mr. Kenrick, do you mean by the natural environment,
18 the statutory definition of the environment set out at
19 section 1(c) sub-clause (1) which reads:

20 "Air, land or water..."

21 And sub-clause (2) which reads:

22 "Plant and animal life including man."

23 A. I believe so.

24 Q. Thank you. And do you mean then by
25 the socio-economic environment, the statutory

1 definition of the environment set out at Section 1(c)
2 sub-clause (3) which reads:

3 "The social, economic and cultural
4 conditions that influence the life of
5 man or a community."

6 A. Yes.

7 Q. In paragraph 2 of your evidence, you
8 state that your panel focuses on the socio-economic
9 effects which occur outside the geographical limits of
10 the area of the undertaking, and that this evidence is
11 to assist the Board in understanding how wise
12 management of this aspect of the environment
13 contributes to the betterment of the people of Ontario
14 as a whole, as well as, in those parts of Ontario which
15 are within the area of the undertaking.

16 Is that correct?

17 A. That's correct.

18 Q. Mr. Kenrick, I want you to tell me
19 which evidence, in your judgment, is most germane to
20 this undertaking: Evidence which assists the Board in
21 understanding how wise management of the socio-economic
22 environmental effects contribute to the betterment of
23 the people of Ontario, or evidence which assists the
24 Board in understanding how wise management of the
25 natural environmental effects contribute to the

1 betterment of the flora and fish and wildlife of
2 Ontario?

3 A. I am not sure I caught the
4 distinction you're driving at, sir.

5 Q. Let me ask you the question again. I
6 want you to tell me, in your judgment, which evidence
7 would be most germane to the undertaking: Evidence
8 which assists the Board in understanding how wise
9 management of the socio-economic environmental effects
10 contribute to the betterment of the people of Ontario,
11 or evidence which assists the Board in understanding
12 how wise management of the natural environmental
13 effects contribute to the betterment of the flora and
14 fish and wildlife of Ontario?

15 A. I am not sure I could agree that
16 either one was more germane than the other one. I
17 think they are two components, both of them important.

18 Q. Are you saying then that they are
19 equally germane and of equal importance in
20 consideration of the undertaking as a whole?

21 A. I am saying they are both fairly
22 broad topics and I am not sure I could make a choice,
23 an either/or statement about the two of them.

24 Q. How can you deal with the use of
25 those natural resources, non-timber natural resources

1 in a socio-economic framework if they don't exist?

2 A. I'm afraid I continue to lose your
3 question. I am not sure I...

4 Q. Which comes first, the consideration
5 of the natural environment and the impact of the
6 undertaking thereon, or consideration of the
7 socio-economic environment?

8 A. I guess I would assume that the
9 resource has to be there before one can find some
10 socio-economic benefit from it.

11 Q. Thank you. In developing your
12 evidence on this theme in your paragraphs 6 and 7; that
13 is, the socio-economic benefits, why then in fact do
14 you limit your evidence on fisheries and wildlife
15 resources to their commercial value as sources of food,
16 employment and recreation in Ontario?

17 A. I am not sure in the entirety of the
18 evidence package that I have limited my description of
19 the fisheries resource to that that is commercial in
20 nature. I believe I addressed angling as a
21 recreational activity, and if I didn't make the point
22 that the importance of angling is more than its
23 contribution commercially or as a part of the tourism
24 trade, it was unintentional.

25 Q. Would it be fair to say that your

1 evidence seems to be preoccupied with the utilitarian
2 features of these resources rather than addressing the
3 intrinsic value of these resources?

4 A. It was certainly not intended, and I
5 believe there is a section in my evidence package that
6 talks about, in attempting to put a value on various
7 resources that may be monetary or otherwise related to
8 peace of mind and health and all the rest of that.

9 Q. Well, perhaps you could assist the
10 Board and myself in singling out in your statement of
11 evidence and in your report the issues that deal with
12 these resources, other than in the context of the
13 socio-economic benefits to the people of Ontario, which
14 is what you emphasize in paragraph 2 of your opening
15 statement of evidence?

16 A. I believe if you take a look at page
17 137 as an illustration, the whole purpose of that
18 section was to try and place a value or recognize a
19 value of resources that may be the product of more
20 passive non-consumptive use and recognize people who
21 place a value on various resources largely because of a
22 vicarious or indirect sense.

23 Q. What page are you on, I am sorry?

24 A. 137.

25 Q. 137 of the statement of evidence or

1 of your report?

2 A. Of my report.

3 Q. It just goes to page 113, does it
4 not, or is that -- or you are talking about exhibits
5 now?

6 MR. FREIDIN: He is talking about...

7 MR. KENRICK: The large numbers in the
8 right-hand corner.

9 MR. WILLIAMS: Q. You are looking at
10 page 137 and I see a Figure 45 dealing with Ontario
11 recreation by activity.

12 MR. KENRICK: A. That is correct. And
13 if you look down to the seventh item, it is an attempt
14 there to try and show - fish is listed, I believe your
15 question was related to fish - that there is an
16 activity that is non-consumptive, if you will,
17 utilitarian and is trying to attempt to place a value
18 on it.

19 One of the reasons, if we are merely
20 counting pages in terms of how much of the report was
21 devoted to the monetary values versus the non-monetary
22 values, it is difficult to find values for that kind of
23 a value, the database is a lot less. I think it is
24 recognized though.

25 Q. Is that the extent of the recognition

1 that you give to the non-commercial, non-monetary
2 values in your report?

3 A. I believe, and I will just check. If
4 you look on page 120, the middle full paragraph, I
5 believe there is a recognition there and it is one
6 stated by anglers that the types of elements that
7 contribute to the enjoyment of their trips - angling is
8 the least important item - is the number and size of
9 fish caught.

10 The types of things that compose angling
11 as an activity or make angling pleasurable are things
12 like enjoyable weather, natural beauty, water quality,
13 sort of the peace and tranquility of the activity of
14 fishing independent of the number of fish caught. I
15 think that is another way of expressing the value of
16 fisheries resources other than trying to put a cash
17 value on it.

18 Q. Are you equating what you are telling
19 me with an identification of the intrinsic values of
20 the flora and fish and wildlife of our province?

21 A. I understood your question to be
22 related to fisheries and I think that's --

23 Q. You drew that conclusion, I didn't
24 say that. I am talking about the whole spectrum of the
25 natural environment that incorporates flora and fauna

1 products.

2 A. I would -- that happens to be a
3 fisheries illustration. I would then go back to remind
4 you that my belief in putting all of Section 10.25
5 which is starting on page 135, especially the
6 information shown on page 137 under Figure 45 --

7 Q. Which page are you on now?

8 A. 137, the page I referenced a few
9 minutes ago.

10 Q. Page 137.

11 A. Was an attempt to try and recognize
12 and place a value on some of the more intrinsic values
13 in the province, flora and fauna considered. That was
14 the purpose of recognizing activities like recreational
15 driving, walking, visiting nature displays, guided
16 nature tours, viewing and photographing flora and
17 fauna, plants, rocks.

18 Q. This is the evidence you gave a few
19 moments ago which you are now elaborating upon. But
20 again with respect, Mr. Kenrick, I don't appreciate how
21 those particular social benefits deal with the
22 intrinsic value of those resources themselves.

23 It may be of utilitarian value to the
24 consumer, to the benefit of the people of Ontario, but
25 it alludes me as to how you can equate what you are

1 saying with dealing with the intrinsic values of those
2 particular assets?

3 A. I believe the way the report has been
4 structured - I am still not sure if I have your
5 question clear - but the way it has been structured is
6 that the way I elected to talk about resources is to
7 talk about the use of them and then went on -- the
8 concept of stakeholders.

9 Q. No pun intended, but that comes
10 through crystal clear and my questions to you have been
11 why your preoccupation and, it would appear, exclusive
12 attention to only one dimension of the natural
13 environment or of the environment that you identified
14 being the utilitarian features of those resources
15 rather than addressing the intrinsic values of those
16 resources?

17 A. I think, if I may, I will go and take
18 a quick look at an interrogatory because I think this
19 topic has been addressed there. I believe it is
20 somewhat the same question, asking --

21 THE CHAIRMAN: Which one are you
22 referring to, Mr. Kenrick?

23 MR. KENRICK: Interrogatory No. 1 from
24 Mosklin Bio Information Limited.

25 THE CHAIRMAN: That is not before us; is

1 it?

2 MR. WILLIAMS: No, I don't think it is,
3 Mr. Chairman.

4 MR. FREIDIN: Perhaps the witness can
5 just be advised, if you believe that you would like to
6 refer to an interrogatory for the purpose of answering
7 the question, the fact that it is not before the Board
8 doesn't prevent you from referring to it and putting it
9 before it the Board, so...

10 THE CHAIRMAN: I think it would be
11 helpful if you would just read in the question and then
12 refer to it in any way you want, just so we know what
13 the question was.

14 MR. KENRICK: It is part (a) and (b):
15 "Please provide the rationale for
16 labelling the above noted living and
17 non-living attributes of the environment
18 in Ontario as resources."
19 And the suggestion there is a utilitarian
20 one.

21 "One of the reasons for excluding quality
22 natural ecosystems in the above list of
23 resources."

24 Is that somewhat the same question?

25 MR. WILLIAMS: Q. Well, with respect, I

1 don't think I would ascribe my line of questioning to
2 the type of question being put before you by another
3 party to the proceedings and I would prefer and I would
4 ask you that you perhaps --

5 THE CHAIRMAN: Well, Mr. Williams,
6 perhaps I could assist.

7 Mr. Kenrick, you have been asked by
8 counsel as to why you formulated your report in a
9 particular way and you have indicated you formulated
10 your report in terms of the utility of the resources
11 discussed as opposed to dealing with the intrinsic
12 value of those resources.

13 Can you explain to the Board why you
14 chose to do it that way?

15 MR. KENRICK: Again, part (a) of the
16 report deals with just the description of the
17 resources. Part (b) was an attempt to try and put a
18 value on resources as best I could, monetary or
19 otherwise and I think it is important that those things
20 are considered as resources.

21 I might use a illustration of something
22 like a scenic resource. My understanding of that term
23 resources - and I will quote from the Oxford Dictionary
24 if necessary - is it is a means of supplying what is
25 needed that can be drawn on an asset, a country's

1 collective means of support. So what I tried to do was
2 describe the benefits that come from the resource, if
3 you will.

4 MR. WILLIAMS: Q. I think that you have
5 made that clear, very clear throughout that you have
6 talked from the perspective of how those particular
7 resources are of a benefit to the people of Ontario and
8 I am still waiting for an answer as to why you do not
9 see it appropriate to deal with the other facet of the
10 environment as interpreted by the Act and which you
11 have acknowledged conforms with the definitions within
12 the Act, why you have ignored dealing with those
13 natural resources in their own right?

14 MR. KENRICK: A. I don't think I have.
15 The section of the Act that you started out referring
16 to was 5(c), if I'm correct, and talks about describing
17 the environment.

18 Q. Yes.

19 A. And I think I have described some of
20 the non-utilitarian values of the environment.

21 Q. Well, perhaps that may emerge as we
22 go along. I have yet to be convinced that that is so,
23 with respect. But let me ask you these questions which
24 may assist in bringing out that evidence.

25 Given your emphasis on the commercial

1 value of wildlife, I would like to ask you specifically
2 these questions: Do you and your Ministry equate
3 expenditures with value?

4 A. Which expenditures are you referring
5 to?

6 Q. Such as you have been talking about
7 in your evidence for the past day.

8 A. Not necessarily. I don't think -- I
9 don't think it is an automatic conclusion that if
10 resource "A" provincially is worth more than resource
11 "B" and there has to be a decision made we will always
12 find in favour of resource "A".

13 Q. Let me ask you this: How does the
14 Ministry calculate the commercial value of wildlife?

15 A. Again, I am not quite clear on what
16 you are referring to as commercial. I am not sure the
17 Ministry has attempted to put a dollar value totally on
18 the value of wildlife.

19 What we can do is talk about a value
20 ascribed to some of the uses of it, we can put a value
21 on licence revenue, but I don't think it is the
22 Ministry's or my intention to be able to add up those
23 types of things and say this is the sum total of the
24 value we place on a wildlife resource.

25 Q. You have -- throughout your evidence

1 you have been providing to the Board statistical
2 information to which you have been attaching dollar
3 signs indicating the value of these resources from the
4 point of their utilization by the people of Ontario and
5 you have given us very impressive statistical
6 information on those values which surely must be
7 commercial in nature.

8 A. First of all, I guess my use of the
9 term commercial in my report only referred to the first
10 half of the second half of the report which is
11 commercial stakeholders. There was an attempt there to
12 also talk about recreational users in a non-commercial
13 sense and to talk about local traditional users and
14 general public.

15 Q. Is value the same as economic impact
16 in your judgment?

17 A. No.

18 Q. Do expenditures reflect the true
19 value of a resource?

20 A. No, I don't believe so. Again, I
21 believe there are values placed on certain resources
22 that are non-economic in nature.

23 Q. And yet throughout your testimony you
24 have been using expenditures as a measure of value, is
25 that not a fair observation?

1 A. I have used statements of value where
2 I could find them and one of the common ways of giving
3 relative values to resources is to, in part, refer to
4 direct expenditures, if you will.

5 But there is an attempt in the report to
6 deal with the much less precise values of peace of
7 mind. I think there was a piece of my evidence, I am
8 sure there was, a piece of my evidence that talked
9 about the value that people place on some of the
10 protection objectives the Ministry has.

11 Q. Could you give us an overview of the
12 other methods of determining value which are available
13 to the Ministry and which are employed, to your
14 knowledge, as one who is so intimately involved with
15 the activities of the Ministry in this area?

16 A. I take values in a very broad sense.
17 I think another measurement that could be used is
18 public concern which may not have an economic facet to
19 it at all.

20 Q. Let me ask you this: Is the worth of
21 the flora and the fish and wildlife in their biological
22 and ecological environment the true measure of value to
23 be applied to the overall timber management formula?

24 A. I would say it is a very basic part
25 of the health of those resources in the first place.

1 Q. And, again, notwithstanding your
2 answer that it is a very basic part of the
3 consideration, in describing your environment, would
4 you not say that your efforts have fallen short in
5 dealing with that aspect of the environment affected by
6 the undertaking?

7 A. I am not sure I believe that. There
8 may be others who do.

9 Q. Are you of a mind or opinion that
10 your evidence has given equal consideration and weight
11 to the two dimensions applicable to that issue of the
12 environment and the environment affected, the natural
13 and the socio-economic?

14 A. I don't think the intent was to apply
15 weights to it in the first place by counting pages, for
16 instance. Similarly, it was not my intent, even when I
17 am dealing with economic matters, to particularly
18 encourage people to be making direct comparisons
19 between different elements.

20 THE CHAIRMAN: Mr. Williams, doesn't the
21 evidence have to be taken in the context of the entire
22 hearing as opposed to just the evidence of one panel?

23 MR. WILLIAMS: It does most certainly,
24 Mr. Chairman.

25 THE CHAIRMAN: Would not the fact that

1 aspects of the social and economic environment or the
2 natural requirement are dealt with by different panels
3 throughout the course of the hearing be what is
4 important, rather than the weight placed by any one
5 panel in the course of its evidence on either the
6 natural or social and economic environment?

7 MR. WILLIAMS: My concern, Mr. Chairman,
8 is that I don't see any light at the end of the tunnel
9 where there are subsequent panels that go in a
10 different direction than from which this panel has
11 embarked upon.

12 THE CHAIRMAN: Well this, as I understand
13 it, is an overview panel to be followed by specific
14 panels dealing with the specific activities which will
15 probably, I am going by assumption, deal with the
16 impacts to both the natural and social and economic
17 environments vis-a-vis the individual activities being
18 carried out as part of the undertaking.

19 MR. WILLIAMS: Your assumption may prove
20 correct, Mr. Chairman, but do we know and is that not
21 in fact, I guess, part of the problem addressed
22 yesterday in dealing with the procedural matters that
23 were put forward by Mr. Campbell and myself in
24 supporting the need for the Ministry to take the
25 constructive actions it's proposing so that --

1 THE CHAIRMAN: Well, we may be dealing
2 with the problems - and we will be - that arose from
3 the motions yesterday and the day before and I suppose,
4 in the absence of a guarantee that this will be dealt
5 with later, you are entitled to explore it with this
6 panel.

7 So on that basis, I suppose we shall
8 allow you to proceed.

9 MR. WILLIAMS: Thank you.

10 MR. KENRICK: If I may, perhaps a
11 reference I should have made. In looking back at some
12 of the Ministry policy statements, I guess I am trying
13 to draw a fine line here between what my evidence
14 package appeared to have done and whether that's the
15 intent of the Ministry in managing its resources.

16 Clearly, as we go through Ministry policy
17 statements on fish and wildlife resources there is a
18 priority stated in terms of -- I am just trying to find
19 the reference here.

20 MR. WILLIAMS: Q. Which document are you
21 referring to?

22 MR. KENRICK: A. Strategic Land Use Plan
23 for Northeastern Ontario.

24 Q. I am going to be coming to that very
25 shortly. Maybe you can -- you will have an opportunity

1 to -- go ahead, if you feel --

2 A. I would still like, I guess, to state
3 the principle. It says:

4 "The allocation of the region's fish and
5 wildlife resources will be guided by the
6 the following priorities..."

7 And the maintenance and rehabilitation of
8 the resource is priority No. 1. Having dealt with that
9 in order of priority, then the more utilitarian uses of
10 some of those resources comes after that. I believe if
11 you look in --

12 Q. I have advised counsel to provide you
13 with copies of that document because I indicated I
14 would be referring to that document and certainly the
15 matter that you are raising is one that I want to
16 discuss with you when I come to that document.

17 So perhaps you could address those
18 matters at that time.

19 MR.. FREIDIN: Perhaps, Mr. Chairman, the
20 record should at least record that it is Exhibit 8 that
21 the witness is referring to and note the page that he
22 is referring to.

23 MR. KENRICK: Page 9.

24 THE CHAIRMAN: Thank you.

25 MR. WILLIAMS: Q. Mr. Kenrick, at the

1 outset of these hearings other witnesses for the
2 Ministry gave evidence that timber management is not
3 practised in isolation, that the other resources within
4 the area of the undertaking are always taken into
5 consideration in the practice of integrated resource
6 management and as an essential element in exercise of
7 the Ministry's multiple land-use policy.

8 From the outset, I have taken that term,
9 'other resources within the area of the undertaking',
10 to mean the natural environment and not the
11 socio-economic environment. Which is it?

12 MR. KENRICK: A. Could you repeat the
13 quote again?

14 Q. From the outset of the hearings your
15 other Ministry witnesses have given evidence that
16 timber management is not practised in isolation, that
17 the other resources within the area of the undertaking
18 are always taken into consideration.

19 I had interpreted the 'other resources
20 within the area of the undertaking' to mean the natural
21 environment, not the socio-economic environment.

22 A. I interpret the other resources to
23 refer to other than timber resources and may well be
24 socio-economic or not.

25 Q. As well as the natural?

1 A. That's correct.

2 Q. Does the Ministry timber management
3 policy allow us to optimize the resource return from a
4 given tract of land?

5 A. What do you mean when you refer to
6 timber resource management policy?

7 Q. Such as has been under discussion
8 since the opening of the hearings, the policy that we
9 will be hearing more about in the management process in
10 future evidence.

11 And what I am wondering is whether the
12 policy allows one to optimize the resource return from
13 the land, not only the benefits accruing from the
14 timber itself but from the other resources as well?

15 A. I guess the short answer would be
16 most certainly, but optimizing strikes me as to
17 somewhat of a relative term. I think it is our hope,
18 through concepts like integrated resource management,
19 to try off most land, if it is possible, to get a blend
20 of timber benefits and a host of other benefits.

21 Q. The title of this panel is The
22 Environment Affected. Would you agree that the title
23 employs real and potential environmental impact of
24 timber management on other resources and activities?

25 A. Implies real and potential -- ask

1 your question again, please?

2 Q. You would agree that the title of the
3 panel is The Environment Affected?

4 A. Correct.

5 Q. Do you or do you not agree that the
6 title employs real and potential environmental impact
7 of timber management on other resources and activities?

8 A. I don't believe the title talks to
9 impacts at all, it is a description of the environment.
10 The effects that it may be talking about, I am thinking
11 of the contents of future panels, are real effects
12 and -- I guess I would agree potential effects, yes.

13 Q. Why then in the general and
14 endangered species information in your paragraphs 8 and
15 9, why is this information entirely descriptive?

16 A. I hate to answer a question with a
17 question, but how else would you have me show it other
18 than as descriptive? I am not sure what you are
19 driving at.

20 Q. Why is your testimony on these
21 non-timber resources reduced to a presentation of a
22 bare bones inventory of flora and fauna?

23 A. Again, sir, I think you have to take
24 a look at this panel being one of a host of panels,
25 including the one immediately that follows me which

1 will deal with resources in more detail.

2 Secondly, I think you have to look at the
3 list, or the statement of evidence that you are looking
4 at as even a summary of what my report is, which is a
5 summary itself. I believe you have to look at all 16
6 elements collectively and not just two of them.

7 I guess it depends at what general level
8 of generality you want to deal at. Those paragraphs
9 are bare bones. My text, I believe, is less bare bones
10 and the people that will follow me will provide even
11 more detail.

12 Q. Yet you just stated a few moments ago
13 that environmental impact is very much a consideration
14 of the topic that you have presented in evidence?

15 A. Yes. My role, as I understand it, is
16 to describe the environment affected and other people
17 in subsequent panels may well -- will be dealing with
18 the nature of those impacts in more detail than I have.

19 Q. Who is going to provide --

20 THE CHAIRMAN: Just a moment. Mr.
21 Kenrick, it seems to be from your last answer that you
22 are not dealing in this panel with the impacts as
23 opposed to describing, in general terms, the resources,
24 the environment affected including those resources.

25 MR. KENRICK: That's correct.

1 THE CHAIRMAN: And from what I got from
2 your last answer, other panels or subsequent panels are
3 going to deal with the impacts upon those resources.

4 MR. KENRICK: That's correct.

5 MR. WILLIAMS: Perhaps if not yourself,
6 Mr. Kenrick, perhaps counsel for the Ministry could
7 advise which panel will be doing the analysis of such
8 impact?

9 MR. FREIDIN: All the panels which deal
10 with that will in fact be describing the potential
11 effects of those activities on both the natural
12 environment and the economic environment. They will
13 also be describing the methods by which those potential
14 effects are dealt with either by way of prevention,
15 mitigation or remedying. So all of those panels are
16 going to deal with those effects.

17 I should advise, however, that those
18 panels are not going to sort of put some value on what
19 in fact is protected by taking measure A, B, C or D.
20 The evidence will be as I have described it. I really
21 think that is in fact the evidence that it is incumbent
22 upon the proponent to put forth in this particular
23 environmental assessment.

24 While I am on my feet, I just want to
25 know how much more benefit we can obtain through a

1 continuation of this line of questioning, Mr. Chairman?

2 THE CHAIRMAN: Well, Mr. Williams, I do
3 not like to interfere in any way with your
4 cross-examination, but the evidence put forward by this
5 panel was very much indicated that it was in the form
6 of an overview to be followed by specific panels
7 dealing with the specific -- both resources and the
8 impacts of those resources as a result of the
9 proponent's proposed undertaking.

10 And, again, to go through a line of
11 questioning trying to find out why the impacts are not
12 described in sufficient detail in this particular
13 statement, I do not think is particularly fruitful,
14 bearing in mind what the witness has just answered to
15 my last question.

16 MR. WILLIAMS: Thank you, Mr. Chairman.

17 Q. Mr. Kenrick, as the Senior Regional
18 Planner in the Ministry's northern region in the
19 mid-70s, the primary task was to work on the strategic
20 land use planning program and to develop the Strategic
21 Land Use Plans for Northeastern Ontario; is that
22 correct?

23 MR. KENRICK: A. The Strategic Land Use
24 Plan for Northeastern Ontario, yes.

25 Q. Could we then turn to Exhibit 8 that

1 was introduced early in these hearings, Mr. Chairman,
2 which is the Northeastern Ontario Strategic Land Use
3 Plan.

4 Turn to page 5, on the right-hand column,
5 the first full paragraph under the heading Strategic
6 Land Use Plan For Northeastern Ontario. Would you
7 agree that it states that:

8 "The purpose of the plan is to provide
9 long-term opportunities for a diversity
10 of resource uses within a healthy social,
11 economic and physical environment.
12 Towards this end and within the planning
13 time frame, the goal of the Ministry of
14 Natural Resources will be to manage the
15 natural resources of northeastern Ontario
16 on a sustained yield and multiple-use
17 basis."

18 A. That is what it says.

19 Q. Agreed. Do those purposes and goals
20 as stated still apply today?

21 A. I believe so. I might just mention
22 that the purpose that you quote, the first portion of
23 that quote is very much a parallel to the goal of the
24 Ministry of Natural Resources. It uses different
25 words, but it speaks to the same concepts.

1 Q. And I presume that those purposes and
2 goals would be the same in the Northwestern Ontario
3 Strategic Land Use Plan which, two plans together,
4 basically encompass all of the area of the undertaking;
5 is that correct?

6 A. I believe so.

7 Q. Two of the resources identified in
8 the plan are fish and wildlife. Do you agree that
9 specific resource policies are applied to each of those
10 particular resources?

11 A. Yes.

12 Q. Let us turn then, if we could, to the
13 one specific resource policy entitled Fisheries
14 Management on page 29.

15 Would you agree that the plan states that
16 the policy objective under Fisheries Management is:

17 "To protect, enhance, maintain and
18 rehabilitate fish communities and their
19 environment in order to provide an
20 optimum contribution of fish, fishing
21 opportunities and their associated
22 benefits to society."

23 A. That's correct.

24 Q. Would you agree that this plan then
25 lays out a grand strategy by which the policy

1 objectives are to be achieved?

2 A. I am not sure of your intention of
3 grand strategy but, generally, yes.

4 Q. In the sense that it is a basic
5 proposition stated in all of your strategic land use
6 plans that affect the area?

7 A. It states program direction.

8 Q. And you were satisfied, as one who
9 has been actively involved in this program, that what
10 we see before us in the northeastern strategy plan has
11 equal application in the northwest, and I think you
12 said that?

13 A. If it is a major point, I would like
14 to compare the words. But they are generally a
15 statement of --

16 Q. No, I just wanted to reaffirm that we
17 are not talking differently, in different areas of the
18 undertaking, applying different approaches or policies.

19 Okay. If I can then direct you to
20 Exhibit 13, I believe, the Wawa District Land Use
21 Guidelines which have been used as an example
22 throughout the hearings and which I would like to,
23 again, use a further example, in particular page 20.

24 THE CHAIRMAN: We have this as part of
25 Exhibit 6. Is there a specific exhibit number given to

1 this?

2 MR. FREIDIN: No, it is Exhibit 6. The
3 page that my friend is referring to, if you turn to
4 page 20, it is page 115 of Exhibit 6.

5 The Wawa District Land Use Guidelines --
6 oh, maybe you have got a separate one. It is included
7 in the big witness statement, but if you have got it
8 separately it is page 20. I think that is what Mr.
9 Williams is referring to.

10 THE CHAIRMAN: Oh, okay. Thank you.

11 MR. WILLIAMS: Q. Again, coming down
12 from the regional to the district venue under the topic
13 of Fisheries Management under the resource policies
14 section, the policy objective stated there - and I
15 think, would you not agree, essentially mirrors what
16 was said in the regional-based document:

17 "To protect, enhance, maintain and
18 rehabilitate fish communities and their
19 environment in order to provide an
20 optimum contribution of fish, fishing
21 opportunities and their associated
22 benefits to society."

23 MR. KENRICK: A. Yes.

24 Q. And are you in a position to say that
25 basically that this same policy objective would apply

1 throughout all of the other district plans that have
2 been developed by the Ministry to this date?

3 A. All the ones that I was accountable
4 for developing that came under the umbrella of the
5 Northeastern Ontario Strategic Land Use plan, I
6 believe, said precisely the same thing. I believe that
7 was the same in the northeastern region too.

8 Q. Do you see within that statement of
9 policy any primary objective?

10 A. Do you mean choosing amongst
11 protecting, enhancing, maintaining or rehabilitating?

12 Q. In the resources referred to therein,
13 yes.

14 A. No, I think --

15 Q. Resources or values referred to
16 therein.

17 A. No, I don't.

18 Q. So that in your opinion they are all
19 of equal value, importance in the fishery management
20 undertaking?

21 A. I can answer the question two ways,
22 if I may. I don't think you can give -- to the portion
23 of the statement that talks about protecting, enhancing
24 maintaining or rehabilitating, I think you would apply
25 a different priority to each of those, perhaps on a

1 lake-by-lake basis, depending on the problems you faced
2 on that lake.

3 In terms of the portion of the objective
4 statement that talks about "in order to provide an
5 optimum contribution of fish, fishing opportunities and
6 their associated-benefits", again I think I would have
7 the same response, that in some cases fishing
8 opportunities may be the benefit I am trying to
9 provide.

10 If it might quote a put-and-take lake in
11 the middle of a small community, Commanda Lake that is
12 existing in the middle of Cochrane, we manage that very
13 much for fishing opportunities.

14 In another lake I might well be managing
15 for some other fisheries-related benefit. I would
16 argue that Alexander Lake in Kirkland Lake District
17 which we are managing as a sanctuary for aurora trout
18 is not being managed for fishing opportunities.

19 The purpose of this objective statement I
20 think is to guide the total program and what falls out
21 of that is mixing and matching various strategies which
22 appear below it to achieve that objective and they will
23 vary on a case-by-case basis.

24 I might add, we absolutely need the
25 flexibility to be able to mix and match those types of

1 solutions to various problems.

2 Q. Are the two elements present in the
3 policy objectives that we were discussing at the
4 outset; that is, dealing with both the natural resource
5 and its intrinsic value as well as the utilitarian
6 aspects of the resource?

7 A. I believe so. The way the objective
8 statement is set up, I think, is to protect the
9 resource and, using that as a paraphrase of enhance,
10 maintain and rehabilitate, to provide a series of
11 benefits, those benefits not always being utilitarian
12 or monetary. I think that is what is meant by
13 associated benefits.

14 I will give you an illustration. I think
15 you will find that the wildlife policy is set up very
16 much the same and I know, as you get into the details
17 of the strategy in wildlife, it talks about things like
18 the less viewing benefits.

19 Q. I am sorry, I missed that last
20 comment.

21 A. I hope I am not trying to
22 second-guess where you are going. I mean to answer
23 your question directly, but I think you appear to be
24 asking: Do we manage for both the economic
25 utilitarian-type benefits and some of the more

1 intangible benefits. My answer is yes.

2 It is a little harder for me to
3 illustrate how we manage for an intangible benefit for
4 fish. I am groping for an illustration, but I would
5 assume sanctuaries where we manage strictly to
6 rehabilitate the species is managing for one of the more
7 intangible benefits, the retention of the species.

8 Q. Under this particular heading of
9 Fishery Management, in dealing with -- fishing is
10 broken down into three categories; sport fishing, lake
11 trout and commercial fishing. Each of these categories
12 has its own set of policy objectives; does it not?

13 A. That's correct.

14 Q. And then could we just for a moment
15 examine those to see if there is a consistency present
16 with regard to sport fishing.

17 The objective at the bottom of page 20
18 is:

19 "To maintain opportunities for a
20 diversified angling experience and to
21 meet the future angling demand for all
22 species within the limits of sustained
23 yield management."

24 A. Correct.

25 Q. Does sustained yield management in

1 this particular instance have the same basic meaning as
2 in timber management planning?

3 A. I believe so.

4 Q. In other words, then, you are saying
5 that in effect we are talking about -- when we talk
6 about sustained yield management, we are talking about
7 a fish population that can grow and be sustained by our
8 lake and river systems and that can be harvested to
9 achieve a continuous approximate balance between growth
10 and harvest?

11 Would that be a fair equating of
12 definitions?

13 A. Perhaps, but I would add the word of
14 caution that, just as I am not sure we apply that
15 concept in forestry on a stand-by-stand basis, I am
16 also not sure we apply it on a lake-by-lake basis all
17 the time. We manage put-and-take lakes.

18 Q. I understand that, but we are talking
19 about policy objectives as a whole. Would that be a
20 fair interpretation of what is meant by sustained yield
21 management in this particular context?

22 A. I believe so.

23 Q. Thank you. And then if we might just
24 turn the page to -- no, I am sorry, to page 21, dealing
25 with lake trout and I suppose the reasons for singling

1 out lake trout will be adduced in later evidence. I
2 won't go into that, but it is certainly singled out
3 and, again, an objective is stated:

4 "To manage for the survival and
5 maintenance of significant lake trout
6 populations and for the provision of
7 angling opportunities."

8 Are you agreed that that objective is
9 consistent, in effect, with the one that we talked
10 about regarding sport fishing and the overall policy
11 objective of fisheries management?

12 A. I believe so.

13 Q. Thank you. And then lastly, dealing
14 with the commercial fishing which is on page 23, again
15 the objective there is more succinct. You can perhaps
16 advise the Board whether, in your judgment, it also is
17 consistent with the two elements of the policy which
18 is:

19 "To encourage the harvest of commercial
20 fish populations where it is biologically
21 feasible."

22 A. I believe they both talk about
23 encouraging use and, in that way, the three policies
24 are similar, actually four if you look at the broad
25 objective for the fisheries management program.

1 I also believe that the concept of
2 sustained yield quoted in the sport fishing objective,
3 the reference to "managing for the survival and
4 maintenance of a species" in the second objective and
5 the reference to "where biologically feasible" in the
6 third objective, were meant to get at the same concept;
7 the health of the resource.

8 Q. Thank you. I don't know whether -
9 well, I guess you were, you can advise in any event.
10 During the mid-1970s, I believe that is about the time
11 you joined the Ministry so you would undoubtedly be
12 privy to this particular activity of the Ministry.

13 It is my understanding that during the
14 mid-1970s a federal/provincial committee for Ontario
15 fisheries was set up to develop a long-range proposal
16 concerning the future fisheries management programs in
17 the province. I understand that this proposal is
18 called the Strategic Planning for Ontario Fisheries?

19 A. SPOF I am aware of.

20 Q. SPOF is the term that is used. You
21 are well familiar with that particular program, are
22 you, or undertaking?

23 A. I am not sure how well. If you plan
24 on getting into it in much detail, I think I would ask
25 you to redirect it to Panel No. 7.

1 I am aware of the concepts in it and I am
2 also aware that the fisheries objectives that the
3 Ministry generated in this exercise flowed from the
4 early '70 direction and concepts that were in SPOF.
5 They weren't meant to be inconsistent in any way, shape
6 or form.

7 Q. I can assure you I won't be going
8 beyond your range of expertise and I simply wanted to
9 have your understanding as to whether or not the SPOF
10 proposal in fact does represent a detailed and
11 comprehensive analysis of fishery management needs and
12 whether it contained major policy implications and
13 recommended major courses of action that were addressed
14 by the Ministry?

15 A. At the time it was done, I understood
16 that it recommended major directions the fisheries
17 program should go, it took a look at the major issues
18 of the day and tried to chart a course through the
19 1970s.

20 I am also aware that recently we have
21 gone through an exercise in the Ministry that I would
22 call SPOF Revisited to determine whether, in fact, the
23 objectives or the course that we set for ourselves as a
24 result of the original SPOF exercise were still valid.

25 Q. When did that happen, the

1 revisitation?

2 A. I can remember vaguely seeing some
3 paper on it a month and a half ago.

4 MR. WILLIAMS: Unfortunately, I have
5 tried without success to obtain a copy of this
6 document, so I am not able to introduce it as an
7 exhibit at this time, Mr. Chairman.

8 But if you bear with me, you will see
9 that it does have some relevance to the line of
10 questioning that follows, and I will be asking for Mr.
11 Kenrick or his counsel to make a copy of this available
12 because I will be intending to refer to it more
13 extensively in Panel 7 or 8, as the case may be.

14 MR. FREIDIN: I just missed the beginning
15 of that line of questioning. Could you just advise
16 what the exact document is that you are seeking, if in
17 fact it is an exact document?

18 MR. WILLIAMS: Strategic Planning for
19 Ontario Fisheries, a mid-1970 document.

20 THE CHAIRMAN: Is there any document that
21 emanated from the revisitation?

22 MR. KENRICK: The only thing that I have
23 seen basically is a form of a letter to staff saying it
24 has been reviewed and basically confirmed most of the
25 original thrusts and I think spoke to a little more

1 about co-management as being perhaps one of the things
2 that has perhaps changed through the 80s. That is all
3 I can recall.

4 MR. WILLIAMS: Q. Essentially, Mr.
5 Kenrick - you may not be able to provide that
6 information, if not so you will advise - but I simply
7 was bringing that proposal into evidence to try to
8 determine what the basic fishery management needs were
9 according to that proposal at that time and what the
10 major policy implications and recommended courses of
11 action were, particularly given your earlier comment
12 that the Ministry has been cognizant of and has applied
13 that proposal to your fisheries management activities.

14 Are you able to -- do you know offhand
15 what those needs were as stated in the proposal or...

16 MR. KENRICK: A. I don't recall the
17 details of the 1970 document. I am -- being one of the
18 authors, it has been a while since I wrote the
19 fisheries management or wrote, with others, the
20 fisheries management plan, but I note in here that it
21 said -- there is a reference to the SPOF document right
22 in the fisheries management policy.

23 It was our -- the document emphasized the
24 concept that fisheries are an indicator of
25 environmental quality and that this realization is

1 important to the future management of Ontario's fish
2 and fisheries. and having read that, I am reminded
3 that was one of the basic premises that were in it.

4 Q. All right. Well, I won't pursue --

5 MRS. KOVEN: Excuse me, what page is that
6 reference on?

7 MR. KENRICK: That reference is on page
8 29 that I just read from from the Northeastern Ontario
9 Strategic Land Use Plan.

10 As I recall, when we had the paper out
11 working on objective statements for fisheries we had
12 all the SPOF documents out on the same table.

13 MR. FREIDIN: Mr. Chairman, I understand
14 Mr. Williams is asking for the document which was
15 produced as a result of this mid-1970 Strategic
16 Planning for Ontario Fishery.

17 I am advised that there are a number of
18 documents which have had wide public circulation in
19 relation to that particular exercise and I will
20 undertake to make inquiries as to whether copies of
21 those are available any longer and to make copies
22 available to Mr. Williams.

23 I think that satisfies your request; is
24 that correct, Mr. Williams?

25 MR. WILLIAMS: Yes, thank you, Mr.

1 Freidin.

2 Just so that you understand where I am
3 coming from on this, it will be my endeavour to elicit
4 evidence as to whether or not these needs, implications
5 and courses of action in the Strategic Planning for
6 Ontario Fisheries proposal have in fact been factored
7 into our District Land Use Plans, and I can perhaps put
8 that to you as a matter of a question directly, Mr.
9 Kenrick, and if you are not in a position to answer
10 that at the moment, so advise.

11 It is certainly information that I want
12 to have determined in a positive way, either by
13 yourself or a future witness.

14 MR. FREIDIN: Mr. Chairman, I think the
15 problem in dealing with Mr. Williams' material, I
16 think -- you know, if Mr. Williams is attempting to
17 examine this witness at any length about the objectives
18 of the fisheries management program, I have some
19 question as to whether that is sort of leading us down
20 a path which is really not something that is really
21 before the Board for determination.

22 I don't want to say I am objecting at
23 this stage. I will make the document available, but
24 based on his last comment, I have some concern that we
25 don't get down the path that we are really not -- we

1 shouldn't be on.

2 THE CHAIRMAN: Well, Mr. Williams, where
3 are you going along this path?

4 MR. WILLIAMS: Mr. Chairman, I had hoped
5 my last remark was giving you some indication of what
6 the line of questioning was all about, and it is an
7 effort to determine whether that earlier policy in fact
8 has a bearing on our fisheries management policy of
9 today which we will be discussing at some length, I
10 presume, in Panel 7 and 8.

11 MR. FREIDIN: We will not be discussing
12 the fisheries management policy in Panel 7, 8 or any
13 other panel, Mr. Chairman.

14 THE CHAIRMAN: It was our understanding,
15 Mr. Williams, that the specific policies, such as the
16 moose policy and the fisheries policy, are not really
17 up for determination before this Board, although there
18 may be certain impacts arising from those policies
19 which interface with impacts from the timber management
20 policy, inter-react with any impacts that might be a
21 result of the timber management policies.

22 And insofar as there is that interface,
23 we may be dealing with these other policies, but we are
24 not adjudicating on the propriety of these policies
25 that have already been formulated and are in effect, at

1 least that is the Board's understanding.

2 MR. WILLIAMS: Agreed. No question, no
3 question.

4 I had no difficulty with that, Mr.
5 Chairman. I will not be going into depth by way of
6 cross-examination on those documents, I am simply
7 trying to pull together the base documentation from
8 which the fisheries management program was developed
9 and knowing what the main areas of concern and
10 responsibility are under those programs, how they will
11 then assist in determining how the undertaking affects
12 the implementation of that policy in practice.

13 THE CHAIRMAN: Is what you are getting at
14 is whether the proposal of the Ministry can properly
15 co-exist with the existing other policies, the
16 fisheries policy, the moose policy, the parks policy?

17 MR. WILLIAMS: Inter-relationships and
18 linkage between them is of primary concern, Mr.
19 Chairman, and that is exactly what I am endeavouring to
20 understand.

21 THE CHAIRMAN: All right.

22 Well, Mr. Freidin, you have indicated
23 that you are going to provide, if you can, some of
24 these base documents. I think we will wait for the
25 specific questions relating to those documents before

1 we rule whether or not they are properly before the
2 Board.

3 MR. FREIDIN: I fully agree with that.

4 THE CHAIRMAN: Thank you.

5 MR. WILLIAMS: Q. Mr. Kenrick, to your
6 knowledge, has the Strategic Policy for Ontario
7 Fisheries that we have been talking about been the
8 catalyst that has spawned, if you will pardon the pun,
9 has spawned the production of the Planning Manual for
10 District Fisheries Management Plans that was brought
11 into being in 1986?

12 MR. KENRICK: A. I think the manual,
13 while it took some direction from it -- I am not sure
14 how you want to use the word spawn.

15 There is a linkage between the SPOF
16 exercise, the objectives of the fisheries program, the
17 production of manuals for the preparation of fisheries
18 management plans and the fisheries management plans we
19 are working on now. Yes, there is a thread through
20 those.

21 Q. Am I correct in my understanding that
22 it was as recently as 1986 when the Fish and Wildlife
23 Branch of your Ministry embarked upon the district
24 fisheries management plans program relying on this
25 manual?

1 A. That's correct. I think there was
2 some previous attempts at trying to produce a fisheries
3 management plan prior to the manual but, mm-hmm.

4 Q. Do you know how many district
5 fisheries management plans have been produced to date?

6 A. No. I can speak to my home region,
7 if -- there are eight districts, all of them -- one was
8 done as a prototype and I think there was one done in
9 each of the regions.

10 All of the other ones are in production
11 now with the exception of Moosonee and they are working
12 with something I would call a strategy. Generally,
13 something that resembles a fisheries management plan is
14 in production or produced in all of our districts.

15 Q. Would it be possible to get from you
16 something that you are so good at, which is to provide
17 us an inventory of those management plans and the
18 status -- the stages they are at, just to have an
19 appreciation of how far these plans and the program
20 have been developed to this stage?

21 A. For my own region or...

22 Q. No, on a provincial-wide base.

23 MR. FREIDIN: Mr. Chairman, I just don't
24 know where that is going to be of assistance and,
25 again, I question whether this is getting beyond the

1 scope of this enquiry.

2 THE CHAIRMAN: This has the possibility
3 of a fishing expedition, Mr. Williams, and since we are
4 all using puns at this hour of the day, how is this
5 going to assist us if all of this documentation is
6 produced?

7 MR. WILLIAMS: Well, Mr. Chairman, I
8 think I only requested one document to be produced. To
9 my recollection, it is the Strategic Policy for Ontario
10 Fisheries and I was simply asking how many district
11 fisheries management plans that are based on that basic
12 policy have been produced to date in Ontario.

13 THE CHAIRMAN: You just want a number?

14 MR. WILLIAMS: Well, the names of the
15 different district fisheries management plans so I know
16 which region they have been in and, yes, the number and
17 the names. It seems to me that that is not an onerous
18 task.

19 THE CHAIRMAN: Mr. Freidin, how difficult
20 is it to produce that?

21 MR. FREIDIN: Well, I think perhaps in an
22 effort to save time, if the witness can give an outline
23 of the districts and the status of the preparation of
24 the fisheries management plans.

25 THE CHAIRMAN: You want it across the

1 province; do you?

2 MR. WILLIAMS: If he simply gave us -- I
3 just want an inventory sheet to tell me the names of
4 the district fishery management plans in existence
5 today. There may be one, there may be 20, I don't know
6 and I still haven't been able to determine it.

7 THE CHAIRMAN: Is that across the
8 province or in the area of the undertaking?

9 MR. WILLIAMS: Well, in the area of the
10 undertaking, I'm sorry.

11 MR. KENRICK: Is that ones that are
12 completed?

13 MR. WILLIAMS: And in progress, just so I
14 have an appreciation of how far along the program is.

15 MR. FREIDIN: Perhaps you can ask if
16 there are any districts in the province where there is
17 not a fisheries management plan in existence or under
18 preparation.

19 THE CHAIRMAN: I think he indicated the
20 only area was Moosonee, and that is a strategic type of
21 plan; is that correct?

22 MR. KENRICK: Yes.

23 MR. FREIDIN: That comment I think is in
24 relation to the northern region.

25 MR. KENRICK: From the northern region.

1 I am familiar with eight districts and there is a plan
2 in progress for all of them, and if you accept the
3 strategic statement that Moosonee is putting together,
4 then I would agree that there is a plan for all of
5 them. How reflective that is of other regions, I am
6 not sure.

7 THE CHAIRMAN: Well, Mr. Freidin, I take
8 it it involves looking at the area of the undertaking,
9 breaking it down into regions, deciding in districts
10 whether or not there is a management plan for each of
11 the districts, giving its name, whether there are any
12 in progress and total them in number.

13 Is that a difficult thing to do?

14 MR. FREIDIN: I can advise you that my
15 present information that every district, MNR district
16 has a fisheries management plan in place or under
17 preparation at the present time. If it turns out that
18 my information is incorrect, I will advise Mr. Williams
19 and the Board.

20 THE CHAIRMAN: So you will have some
21 document that will show you the names of the districts,
22 will you not, Mr. Williams, and that will give you the
23 names?

24 MR. FREIDIN: Exhibit 11.

25 THE CHAIRMAN: Exhibit 11. Is that

1 sufficient?

2 MR. WILLIAMS: Yes.

3 THE CHAIRMAN: Thank you.

4 MR. WILLIAMS: Q. Mr. Kenrick, are these
5 new programs, the district fisheries management
6 planning programs designed to provide to fisheries
7 resources the same type of quantitative, qualitative
8 and analytical management that has been brought to bear
9 in timber management?

10 MR. KENRICK: A. They reflect the same
11 level of planning for the fisheries resource as timber
12 management plans do to the forestry resource, timber
13 resource. They are resource management plans intended
14 to answer the same questions.

15 I believe Panel 1 went through policy
16 planning, land-use planning, resource management
17 planning, work planning, that type of sequence. Both
18 fisheries management plans and timber management plans
19 occupy the same niche, if you will, in that hierarchy
20 of planning.

21 Q. Are there any other planning or
22 management tools that your Ministry uses in coming to
23 the aid and protection of fishery resources?

24 A. Is your question: Are there any
25 other management tools other than plans that are used

1 to manage the resources; is that the question?

2 Q. No, are there any other plans or
3 management tools that your Ministry uses in coming to
4 the aid and protection of our fishery resources?

5 A. Other plans?

6 Q. Outside of -- the district fisheries
7 management plans are the only specific type of
8 documentation that I am aware of that your Ministry
9 uses that is comparable to what is used in timber
10 management.

11 Are not these the most current and
12 sophisticated resource documents that are used to
13 assist in dealing with that non-timber resource?

14 A. It is one of the current exercises
15 under way, if you will, in most of our districts and
16 that is the preparation of fisheries management plans.
17 But I would also argue that there are parallel types of
18 planning exercises for other resources.

19 Q. Could you elaborate?

20 A. Parks management plans, again, is an
21 attempt to try and be the same level and deal with the
22 same types of issues for the provincial parks resources
23 as the fisheries resources.

24 Q. Any others come to mind?

25 A. There have been exercises - and I

1 need a list of Ministry programs in front of me here -
2 there are fire management plans, they are done
3 regionally as opposed to in a district, I mentioned
4 fishery management plans. There are fur management
5 plans, there have been attempts at wildlife management
6 plans.

7 Q. Attempts or actual?

8 A. The program has not been done as
9 comprehensively as the fisheries one to date. I think
10 it is a matter, to some extent, of a limited number of
11 horses available. It is taking a great deal of our
12 efforts right now in resources to finalize the
13 fisheries plans.

14 Q. When was it decided to develop Timber
15 Management Guidelines for the Protection of Fish
16 Habitat?

17 A. I don't think I could answer that. I
18 don't know when that decision was made.

19 Q. My recollection is, however, in your
20 testimony yesterday that you stated that Timber
21 Management Guidelines for Protection of Fish Habitat,
22 Moose Habitat and Tourism were developed to
23 specifically deal with and accommodate each Class EA
24 hearing; is that correct?

25 A. More or less, yes.

1 Q. Do you know who authored the Timber
2 Management Guidelines for the Protection of Fish
3 Habitat or what that person's qualifications are?

4 MR. WILLIAMS: And perhaps your counsel
5 could advise whether the particular party would be a
6 future witness on panels down the line?

7 MR. FREIDIN: Yes. One of the prime
8 authors of the guidelines to protect fish habitat will
9 be a witness, Dr. Allin, A-l-l-i-n.

10 MR. WILLIAMS: Am I correct that that
11 will be coming forward in Panel 8, is it?

12 MR. FREIDIN: No, Dr.--

13 MR. WILLIAMS: Or 7?

14 MR. FREIDIN: Dr. Allin will not appear
15 as a witness I think until Panel No. 10 when we get
16 into the activities.

17 Panel No. 8 will be in fact sort of
18 introducing the guidelines but will be dealing with
19 them in a very general way just to indicate what role
20 they play in decision-making in a very general way.

21 The actual application of that guideline
22 and the other guidelines which have been referred to,
23 tourism and moose, how they actually get used and get
24 referenced will be dealt with in each of the panels
25 that deal with the activities and Dr. Allin is a

1 witness on at least one, if not more, of those panels.

2 MR. WILLIAMS: Q. Mr. Kenrick, with
3 regard to the protection of fish habitat, am I correct
4 in the understanding that the Federal Fisheries Act is
5 the dominant regulator of that situation?

6 MR. FREIDIN: I am not sure whether this
7 witness has the expertise to answer that question, Mr.
8 Chairman.

9 MR. KENRICK: If it helps and you are
10 asking for my understanding the answer is yes, I don't
11 but doubt that there are other pieces of legislation
12 that also affect it.

13 MR. WILLIAMS: Q. To what extent do the
14 regulations under the Fish Act control or limit our
15 intensity, location, time and type of sports and
16 commercial fishing?

17 MR. KENRICK: A. I don't know the
18 regulations to that extent, sir.

19 MR. WILLIAMS: Will there be other
20 witnesses who are better equipped to answer that; is
21 what correct?

22 MR. FREIDIN: Yes, there will be other
23 witnesses who are better equipped to answer that.
24 Whether in fact it is an area which is--

25 MR. WILLIAMS: Relevant to the

1 discussion --

2 MR. FREIDIN: --relevant is another
3 question.

4 THE CHAIRMAN: I must advise the parties
5 that the Board in the future is going to be more
6 vigilant in terms of what is relevant and what is not
7 relevant. Again, that is part of the overall exercise
8 of trying to expedite this hearing.

9 In a hearing of this nature we cannot
10 canvass the entire waterfront. The information brought
11 before the Board should at all times be relevant to
12 what the Board is considering in terms of its specific
13 mandate and in terms of the undertaking you have put
14 before it for approval.

15 MR. WILLIAMS: Mr. Chairman, perhaps you
16 could give me some direction based on your comments.

17 As counsel for a Federation that has
18 utmost interest in the conservation of flora and fauna
19 in our province, it is important for us to know that we
20 have the opportunity to explore and determine and
21 satisfy ourselves that those conservation practices
22 that we are trying to identify are not going to be
23 impinged upon or compromised by reason of the
24 undertaking at hand and, because of our great concern
25 in these areas, we feel that it is important for us to

1 explore these programs and try to determine what
2 relationships do exist or don't exist and, if not, why
3 not and whether there should be a better appreciation
4 in the timber management undertaking towards these
5 conservation matters and resources.

6 And, in an attempt to do so, I think it
7 does require your exercising some degree of latitude as
8 to the extent to which we can develop some evidence on
9 these related programs which you may feel are not
10 related enough to warrant interrogation on it but
11 which, to us, are extremely important.

12 So I do seek your direction in this
13 regard because it is going to impact greatly on to what
14 extent we can continue to raise questions of concern
15 along these lines during this panel and future panels.

16 THE CHAIRMAN: Well, Mr. Williams, it is
17 not the Board's intention to in any way inhibit your
18 ability to indicate your areas of concern both to the
19 Board and to the various witnesses to be called by the
20 proponent.

21 Having said that, would it not make more
22 sense to allow the proponent to develop its proposal in
23 terms of the specific activities that is part of this
24 undertaking - I am referring to the harvesting and
25 access and renewal and maintenance - and then, having

1 seen those specific activities developed, expressing
2 your concerns about conservation in terms of the way
3 the proponent plans to manage the resource?

4 In other words, you will have an
5 opportunity, obviously, to cross-examine those panels
6 dealing specifically with the activities and you will
7 have an opportunity after doing that of calling
8 evidence of your own to indicate whether or not what
9 the Ministry proposes is, in your view -- in the view
10 of your client, appropriate.

11 I think what we are sort of trying to
12 caution against is going too far afield before the
13 specific management practices that the proponent is
14 proposing as a result of this undertaking are really
15 before the Board.

16 As you are aware, up to this point in
17 time we have received a broad overview of the Ministry
18 administrative structure, a broad overview of how
19 forestry in this province has been carried on to date,
20 and a foundation laid for what is to come, I would
21 suggest and that is the specific proposals in more
22 detail being put before the Board.

23 MR. WILLIAMS: With respect, Mr.
24 Chairman, I think that is the broad foundation I was
25 trying to lay with regard to these non-timber

1 resources, so that the opportunity, as we get into the
2 details of the activities in timber management, could
3 be considered in the light of the known programs that
4 exist in these areas. And that is why I was trying to
5 determine what the base resources that were available
6 and were being used by the Ministry in dealing with
7 these particular natural resources.

8 THE CHAIRMAN: Well, we have been told by
9 Mr. Freidin that there will be witnesses who will deal,
10 to some extent, with the specific resource policies
11 that are in effect in later panels as they relate to
12 the practices being put forward by the Ministry,
13 specific activities.

14 And would you not have an adequate
15 opportunity at that point in time to ascertain from
16 your client's point of view whether those practices and
17 whether those policies meet with your objectives?

18 MR. WILLIAMS: Certainly we hope that
19 will be the case, Mr. Chairman.

20 THE CHAIRMAN: All right. And if that is
21 not the case, will you not have an opportunity to put
22 before the Board evidence of your own to indicate what
23 those practices should be?

24 MR. WILLIAMS: Most certainly, but I
25 guess it was our position that this panel and the

1 following panel seemed to be the only panels that were
2 going to exclusively deal with outside interests, so to
3 speak, or resources that could be impacted upon is the
4 title of this particular panel.

5 THE CHAIRMAN: But is not this panel
6 dealing with it at a fairly superficial level, at a
7 fairly generalized overview level? Is not the next
8 panel, as I understand it, going to deal with some of
9 these same issues in more detail?

10 Mr. Freidin, is that correct?

11 MR. FREIDIN: I missed your last...

12 THE CHAIRMAN: Is not the next panel,
13 Panel 7, going to deal with some of these same issues
14 raised by this panel in more detail?

15 MR. FREIDIN: They are going to provide
16 more detailed evidence in terms of the information
17 which is available in relation to each of the resources
18 and which is normally available at the management unit
19 level.

20 THE CHAIRMAN: Where decisions are made.

21 MR. FREIDIN: Where decisions are made.
22 The panel, the main purpose is to indicate to the Board
23 what information in fact is available and can be relied
24 upon when resource management decisions are made.

25 So, for instance, when we are talking

1 about the fishery, and you will hear evidence that
2 certain creel census are taken, that certain
3 inventories of fish populations are taken and that sort
4 of thing, and you will be advised how those particular
5 surveys and census are taken and the sort of
6 information that they create.

7 So that you will have some idea, by the
8 time we get to Panel 15, as to the sort of information
9 which is available to people about not only timber, but
10 the other resources when they are making decisions as
11 to how to accommodate or not detrimentally affect those
12 resources.

13 THE CHAIRMAN: And where are we going to
14 deal with the impact of the timber management resource
15 on these other resources, these other non-timber
16 resources?

17 MR. FREIDIN: They will be in the panels
18 which deal with the activities. So when we talk about
19 harvest, that panel will have on it not just foresters,
20 but will have on it biologists, et cetera, who are
21 there for the specific purpose of indicating that the
22 potential effect of a timber management activity of
23 harvest, for example: potential, is "x" and we believe
24 that that particular matter is properly accommodated by
25 doing "y".

1 And so that is why we are doing it on a
2 panel basis and we will -- those discussions can in
3 fact take place within each of those panels. I believe
4 they will address that whole matter.

5 THE CHAIRMAN: Mr. Williams, what we are
6 attempting to do is try and focus the discussion and
7 focus concerns of groups such as the one you represent
8 in terms of something more specific, instead of dealing
9 with it at some amorphous level which is hard to pin
10 down because we have not yet heard what the actual
11 practices are going to be or are proposed, and that is
12 why I am suggesting that perhaps at that stage of the
13 game your questions relative to the non-timber
14 resources would be much more appropriate.

15 MR. WILLIAMS: Well, certainly you have
16 identified a problem we are confronted with, Mr.
17 Chairman, because - and, again, why our Federation was
18 proposing to bring forward the very type of procedural
19 motion that has been debated over the past couple of
20 days - because we have found it very difficult to get a
21 handle on where the proponent is going on this
22 particular hearing and what it is they are expecting
23 from your Board.

24 And until we have a better sense of what
25 it is that is being sought here it does, I think,

1 prejudice all of the participants, not just ourselves
2 but others who spoke to the issue of the --

3 THE CHAIRMAN: Well, we are certainly --

4 MR. WILLIAMS: --motion.

5 THE CHAIRMAN: We are certainly, as you
6 know, going to deal with the motions that are before us
7 and we have certainly heard from all parties in very
8 full and lengthy submissions as to their concerns and
9 their problems with the way the evidence has been
10 presented to date, so we are going to deal with that.

11 Pending our dealing with that, we may
12 have to embark on these little discussions from time to
13 time, as we have just done, to find out what is ahead
14 in terms of the proponent's evidence to get us past
15 Panels 5 -- or 6 rather and at least 7, since that is
16 before the October break.

17 MR. FREIDIN: Panel 7 won't be before the
18 October break.

19 THE CHAIRMAN: Sorry, but in November.
20 And then if we are going to consider breaking until
21 February, as part of the suggestions in the motions,
22 then whatever our ruling is there may alleviate the
23 situation for future panels.

24 MR. WILLIAMS: Well, obviously we want to
25 assist in any way we can to move the process along and

1 to expedite matters, but we are so fearful of the fact
2 that by withholding the development of evidence that we
3 think will be relevant in the hearings at some point in
4 time, by withholding and then being told in a later
5 panel we should have brought it up in Panel 5 or 6 when
6 we were talking about the basics of the environment
7 affected, that we find ourselves out of court and so
8 that is the fear we have been operating under.

9 THE CHAIRMAN: Well, put it this way, let
10 the Board allay your fears in this sense. We are not
11 sure that any of that perceived injustice, if I might
12 call it that, has in fact occurred up to this point in
13 the hearing.

14 If it should become apparent to the Board
15 at a later date that there has been some problem
16 occasioned by the fact that the parties, when
17 addressing a particular panel early on, did not know
18 exactly what was going to be led later on by the
19 proponent in detail, then the Board would deal with
20 that perceived injustice specifically.

21 And we have several remedies, as you are
22 aware, at our disposal and one is to allow a recall, if
23 necessary, of something to remedy a specific situation,
24 or an alternative form of reply, or any number of
25 procedural innovations that we can come up with to

1 address the specific problem.

2 So I can assure you that if it turns out
3 in fact that you have been prejudiced, the Board will
4 do its utmost to correct the situation at the
5 appropriate time.

6 MR. WILLIAMS: I am sure you would, Mr.
7 Chairman, I appreciate that.

8 As you can appreciate, ourselves, like
9 all of the other parties, I presume have been going on
10 the strength of what the outline of evidence is that
11 was produced at the outset, which is helpful but
12 sketchy notwithstanding, and it has been very difficult
13 to know the depth into which they are going to develop
14 some of their evidence on those --

15 THE CHAIRMAN: Well, we appreciate the
16 difficulties and that was basically the gist, I think,
17 of the last two days' of argument before us by most of
18 the parties.

19 MR. WILLIAMS: Well, Mr. Chairman, I
20 appreciate your advice and direction given what you
21 have -- you know, you have recognized our problem and I
22 appreciate what you are suggesting.

23 Maybe it would be an appropriate time to
24 break so that I can restructure some of the line of
25 evidence that I -- questions that I want to develop

1 that I think perhaps is going to be more intensive than
2 you would have felt appropriate at this time and come
3 back with a more streamlined version for tomorrow
4 morning.

5 THE CHAIRMAN: Very well. Thank you very
6 much, Mr. Williams. We will adjourn until 8:30 a.m.
7 tomorrow.

8 Thank you.

9 MR. WILLIAMS: Thank you, Mr. Chairman.
10 ---Whereupon the hearing adjourned at 5:50 p.m., to be
11 reconvened on Thursday, September 8th, 1988 commencing
12 at 8:30 a.m.

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